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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PAUL GOODMAN and LINDA GOODMAN,

Plaintiffs,

vs.

DILLON TRANSPORTATION, LLC, a
Tennessee limited liability company,
Defendant.

VIDEOCONFERENCE AND TELEPHONIC
DEPOSITION OF: SCOTT L. TURNER

DATE TAKEN: Thursday, December 15, 2016

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3	SCOTT L. TURNER				
4	BY: Mr. Conn	4	139		
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8	EXHIBIT	DESCRIPTION		IDENT.	
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1 T R A N S C R I P T of the stenographic
2 notes of the proceedings in the above-entitled
3 matter, as taken by and before PATRICIA A.
4 MOHYLA-KLEIN, a Certified Court Reporter and Notary
5 Public of the State of New Jersey, held at the
6 office of FITZSIMMONS REPORTING & VIDEOCONFERENCE
7 CENTER, 570 West Mount Pleasant Avenue, Livingston,
8 New Jersey, on Thursday, December 15, 2016,
9 commencing at 10:17 a.m.

10 A P P E A R A N C E S:

11 SMITH BOVILL, P.C.

12 BY: ANDREW D. CONCANNON, ESQ.

13 200 Saint Andrews Road

14 Saginaw, Michigan 48638

15 Attorneys for Plaintiffs

16 PAUL GOODMAN and LINDA GOODMAN

17 SEGAL, McCAMBRIDGE, SINGER & MAHONEY, ESQS.

18 BY: ERIC P. CONN, ESQ.

19 39475 Thirteen Mile Road, Suite 203

20 Novi, Michigan 48377

21 Attorneys for Defendant

22 DILLON TRANSPORTATION, LLC

1 S C O T T L. T U R N E R,
2 business address of P.O. Box 185, Blairstown, New
3 Jersey, 07825, having been duly sworn, testifies as
4 follows:

5 D I R E C T E X A M I N A T I O N B Y M R . C O N N :

6 Q Sir, can you please state your full
7 name for the record.

8 A Sure. It's Scott Lee Turner, T-u-r-n-e-r.

9 M R . C O N N : Let the record reflect
10 this is the deposition of Scott Turner taken
11 pursuant to notice and to be used for all reasons
12 under the Federal Rules of Civil Procedure and the
13 Federal Rules of Evidence.

14 Q Mr. Turner, we're here today to
15 take your discovery deposition in the Goodman
16 matter. I assume you've had your deposition taken
17 before; is that correct?

18 A Yes, sir.

19 Q Okay. A couple of ground rules to
20 go by. Because we're on videoconference, I'm going
21 to ask that you give me some time to ask my
22 questions, and then I'll wait for you to fully
23 respond before we continue on to the next; okay?

1 A Sure.

2 Q Okay. If you answer my questions,
3 I'm going to assume that you understood them; is
4 that fair?

5 A Yes, sir.

6 Q Okay. What's your current
7 professional address, please.

8 A Well, it's a P.O. Box. It's P.O. Box 185,
9 Blairstown, New Jersey 07825.

10 Q Can you tell me, are you currently
11 employed?

12 A Yes, sir.

13 Q Where at?

14 A Self-employed.

15 Q What's the name of your company?

16 A It's two companies. One is Scott L.
17 Turner Consulting, LLC, and the other one is T-Bone
18 Cattle Company, LLC.

19 Q How do you split the time between
20 those two? Is it 50/50 or is one more?

21 A I would say it's probably in the
22 neighborhood of about 50/50. Yes, sir.

23 Q I assume your cattle company has
24 nothing do with your opinions in this case; is that
25 correct?

1 Q Can you tell me over the last five
2 years approximately how many depositions you've
3 given?

4 A Last five years, I would estimate it's
5 been, say in the neighborhood of about 30, I guess.

6 Q Over the last five years, have you
7 testified at trial?

8 A I have.

9 Q How many occasions?

10 A I would say that that probably has been in
11 the neighborhood of about six or seven.

12 Q We're here today talking about a
13 lowboy or drop-deck trailer; is that correct?

14 A Yes, sir.

15 Q Have any of the cases you've worked
16 on over the last five years involved a lowboy or
17 drop-deck trailer?

18 A Uhm, first off, let me explain the
19 difference between a true equipment lowboy for the
20 benefit of the jury and a -- and a lowboy trailer
21 and what we're referring to here. The lowboy
22 trailer that is utilized, such as a Roger's trailer,
23 would be utilized for hauling heavy equipment.
24 That's a drop deck, or as some refer to it as a
25 lowboy, and I have testified on matters involving

1 A No, sir. Unless we're having steak for
2 lunch, no, sir.

3 Q Okay. Well, when I'm up there,
4 maybe we will; how about that?

5 A Sounds good.

6 Q What is Scott L. Turner Consulting?

7 A Uhm, predominantly we provide expert
8 testimony and consulting services for the legal
9 community, both plaintiff and defense. And from
10 time-to-time we do some training for commercial
11 motor vehicle carriers.

12 Q You said "we." Are there multiple
13 employees --

14 A No.

15 Q -- for Scott L. Turner Consulting?

16 A It's always been just a way that I express.
17 "We" meaning myself. I'm the guy that does all the
18 work, so --

19 Q The royal "we"?

20 A That's correct.

21 Q Okay. How many active files do you
22 have currently that you're working on through Scott
23 L. Turner Consulting?

24 A I would say it's approximate --
25 approximately 50.

1 those.

2 And then there's the other type, which are
3 lowboy or drop-deck-type trailer -- or not a
4 drop-deck trailer, but a lowboy trailer that we
5 are -- that was involved in this particular case
6 here.

7 Q So this is a lowboy box truck?

8 A That's correct. Box -- van -- van trailer.

9 Q Yeah. Okay. So just for the
10 purposes of today, when we're referring to drop-deck
11 or lowboy, let's you and I have an agreement that
12 we're talking about the trailer -- the type of
13 trailer that was involved in this incident; okay?

14 A Certainly.

15 Q Okay. That being said, can you
16 tell me over the last five years, have any of the
17 cases that you've worked on dealt with a lowboy or
18 drop-deck trailer?

19 A I really -- over the last five years, I
20 don't recall. I've dealt with them before. Over
21 the last five years, I couldn't tell you
22 specifically, though.

23 Q Okay. Have you ever had a case,
24 this being in your career now, where you have had a
25 situation where you've been asked to provide expert

1 testimony about a drop-deck or lowboy trailer that
2 has precipitously collapsed?

3 A Yes, sir. Well, not --

4 Q Okay. How many --

5 A Let -- let -- let me back up on that. I
6 have dealt with many cases where semitrailers have
7 dropped, using that term, at a loading dock for one
8 reason or another. And then I have -- but as far as
9 it being a drop-deck-type trailer -- or excuse me --
10 a lowboy-type trailer that we're talking about
11 actually dropping at a loading dock, no, sir.

12 Q Okay. So for purposes of what we
13 are dealing with today where there was a Hendrickson
14 MaxiLok system on this particular trailer, if I'm
15 understanding your testimony correctly, you've never
16 dealt with a similar situation in your consulting
17 experience; is that correct?

18 A To clarify, I have never dealt with this
19 specific type MaxiLok system dropping at a loading
20 dock. However, I have dealt with these type
21 trailers in the past.

22 Q In what capacity or what types of
23 situations have you dealt with these types of
24 trailers in the past?

25 A Crashes, loading, offloading, things of

1 that nature.

2 Q Have you ever been asked to perform
3 a causal analysis as to why a lowboy trailer such as
4 the one in this case has fallen, either at a loading
5 dock or another location?

6 A A specific MaxiLok-type system, no, sir,
7 but I have on PosiLok, which is P-o-s-i-L-o-k, which
8 is a very similar-type setup. Yes, I -- and they're
9 the same purpose -- essentially they're the same
10 purpose. I have testified on those in the past,
11 yes, sir.

12 Q All right. I'm going to jump ahead
13 just for a second. There's a reference to a PosiLok
14 in your report that you provided in this particular
15 case. Is that the PosiLok system that you were
16 working on previously --

17 A I've worked on --

18 Q -- and made reference to?

19 A Not just one, I've worked on others, but
20 yes, sir.

21 Q Okay. And I assume the photograph
22 that's included in your report is a photograph from
23 one of your prior --

24 A Can you --

25 Q -- one of your prior --

1 A Would you be so kind --

2 Q Sure.

3 A -- as to point me to the photograph you're
4 referring to, please.

5 Q The photograph is on page 16 of
6 your report.

7 A No, that's actually -- the page 16, which
8 is Photo 11, identified as Photo 11, SLTC -- Source
9 SLTC-PCI, which is postcrash inspection, that's
10 actually from this particular subject trailer.

11 Q Okay. And I guess what I was
12 referring to actually was on page 17.

13 A Well, that's just -- that's an
14 illustration, it's not really a photograph. But
15 that would be -- that would come from the
16 SAF-HOLLAND, all capital letters, SAF-HOLLAND, the
17 PosiLok system, and that would be -- that's a
18 similarity of what I'm trying to demonstrate there.

19 Q Okay. We kind of got off tangent.

20 Let's go back to what we were talking about
21 previously.

22 Over the last five years, can you tell me
23 on how many occasions or percentage of cases you've
24 had plaintiff testimony versus defense testimony?

25 A On average, I would say over the last five

1 years it's been about 50/50. Of late, it's been a
2 little bit more on the 60/40 side with the weight
3 being on the defense.

4 Q You understand that your deposition
5 today was noticed duces tecum?

6 A Yes, sir.

7 Q And you brought some documents with
8 you. I don't have those yet because they're being
9 scanned and sent over to me, but is one of the
10 things that you provided a list of cases that you
11 worked on over the past five or ten years?

12 A Yes, sir. I don't have that in front of
13 me. This is the file that I worked off of. You
14 have it on its way to you electronically. I brought
15 it in a jump drive that I provided to Fitzsimmons,
16 and they're copying it and sending it to you.

17 Q Okay.

18 A Actually, it's four years, sir. I follow
19 the federal regulations, Rule 26 on that.

20 (Whereupon there is a discussion
21 held off the record.)

22 BY MR. CONN:

23 Q Let's talk about a bit about your
24 education. I assume you graduated from high school;
25 is that correct?

1 A That is correct. Right after high school
2 went into --

3 Q What year?

4 A 1981. And right after high school, went
5 into the working world.

6 Q Okay. Any secondary education,
7 university, college?

8 A No, sir. Started in heavy-highway
9 construction right after high school.

10 Q Is one of the documents that's on
11 its way to me a copy of your C.V.?

12 A It is.

13 Q Okay. Does it include your
14 relevant experience after high school?

15 A Yes. There should be a copy of the --
16 well, no, I don't think there is on this one. It is
17 in the jump drive that's being sent to you, yes,
18 sir.

19 Q Okay. Since I don't have that, I'm
20 just going to go through a couple of questions here.

21 You have no formal education in
22 engineering; is that correct?

23 A No, sir.

24 Q That -- is that correct?

25 A No, I do not have formal education in

1 Q What in addition to your -- you
2 talked about your Level 1 training for highway
3 inspections; correct?

4 A FMCSA, that's correct.

5 Q And then what other training have
6 you received?

7 A Ben -- I'm certified as a Bendix -- in
8 Bendix foundation air brake systems, which deals
9 with all the pneumatics, of course.

10 Q And when you say "all the
11 pneumatics," are you talking about on a tractor?

12 A On the tractor and the trailer.

13 Q Okay.

14 A The entire system from bumper-to-bumper.

15 Q Are we talking about air suspension
16 and air brakes?

17 A Air system. Everything to do with the air
18 system. So in this particular case here, it would
19 be in relation to the foundation air brakes and it
20 would be in relation to any air supply to anything
21 else such as either a MaxiLok- or a PosiLok-type
22 system.

23 Q Have you ever had any formal
24 training on a MaxiLok or PosiLok pneumatic system?

25 A No, sir.

1 engineering. That is correct.

2 Q Okay. Have you ever worked as a
3 mechanic?

4 A Not in a shop. I worked as -- doing
5 mechanical work on my own tractor-trailer when I
6 was -- once I -- after doing heavy-highway
7 construction, I got into driving over the road, and
8 I used to do my own mechanic work.

9 Q Have you ever been licensed as a
10 mechanic?

11 A No, sir.

12 Q Have you ever had any formal
13 training in pneumatics?

14 A Uhm, as far as pneumatics are concerned
15 with dealing with air brakes and trained by Bendix,
16 I'm also a Level 1 FMCSA roadside inspector, and
17 you're trained in dealing with those on roadside
18 inspections. So as far as pneumatics, as you refer,
19 or airline systems on commercial motor vehicles,
20 yes, I'm very well trained on that.

21 Q Okay. What type of training have
22 you received in pneumatics?

23 A Again, that would be through Bendix.

24 Q Well, what one training --

25 A I'm sorry?

1 Q No formal training?

2 A No, sir. No -- there's none that I'm aware
3 of.

4 Q Do you have any training in valves?

5 A I'm sorry?

6 Q Did you hear -- oh. Do you have
7 any formal training in valves?

8 A In valves? Valves, v-a-l-v-e-s?

9 Q Yes, v-a-l -- right, sir.

10 A Well, again, so far as I know, there's no
11 specific training that directly is eight hours in --
12 with regard to valves. That's all-encompassed into
13 the Bendix training. It's also encompassed into the
14 Level 1 FMCSA roadside inspector training.

15 Q Bendix you're referring to, that's
16 a company; correct?

17 A That's correct.

18 Q They're a manufacturer of brake and
19 brake systems?

20 A That's correct. Airline -- the whole
21 airline system on commercial motor vehicles.

22 Q You're not a medical doctor; is
23 that correct?

24 A No. No, sir.

25 Q Okay. Do you currently have a CDL?

1 A No, sir.

2 Q It sounds to me like you had one in
3 the past?

4 A I did. Well, not a CDL.

5 Q Okay. What --

6 A Forgive me. Not a CDL, but a commercial
7 motor vehicle operator's license when it was
8 state-by-state.

9 Q Okay. When did you have that
10 license?

11 A Late '80s..

12 Q How is it that you became involved
13 in this matter?

14 A I got contacted by Attorney Concannon
15 asking me to take a look at this and -- as to, you
16 know, potential liability-related issues. And that
17 was essentially how I came -- how I became involved.

18 Q Do you know when you became
19 involved?

20 A Sure. Bear with me one second.

21 Q Sure.

22 A October 19th -- well, it says 201, but we
23 know that's not right. So I would say -- it doesn't
24 say the year. It doesn't say 2015 or '14 or '13.
25 It just says 201, so I don't have the exact year.

1 But if we were to look at invoicing, which is on the
2 jump drive coming to you, that would more define the
3 year.

4 Q Okay. We'll look at that in a
5 minute.

6 A We, of course, know it was post-2012.

7 Q Sure. Were you hired to be an
8 independent witness or an advocate on behalf of
9 Mr. Goodman?

10 A No. I only provide independent witness
11 testimony. I -- that's why I turn down about 50 to
12 60 cases a year because I just -- there's cases that
13 I don't believe in and/or I get asked to do things
14 that I just don't find to be -- don't find to be
15 fair to either side.

16 Q Okay. So in this particular case,
17 then, you were asked to look at the evidence that's
18 admissible and make a determination as to cause; is
19 that correct?

20 A That's correct. In addition to looking at
21 evidence at -- at the actual -- I know this is
22 considered evidence, but the actual commercial motor
23 vehicle that was involved as well.

24 Q Sure. Feel free to refer to your
25 report and your subsequent Affidavit, but can you

1 tell me what information that you reviewed to assist
2 you in performing your causal analysis in this case?

3 A Well, on the main report, it's deposition
4 transcript of Paul Goodman with exhibits; deposition
5 transcript of Ashley Ousterhout with exhibits;
6 Defendant Dillon Transportation, LLC's witness list;
7 Complaint; jurisdictional allegations; Defendant
8 Answer to Plaintiff Complaint; plaintiff's witness
9 list; Plaintiff's Answers to Defendant's
10 Interrogatories; defendant Dillon Transportation,
11 LLC's Responses to Plaintiff's Request to Produce;
12 Defendant Dillon Transportation, LLC's Response to
13 Plaintiff's Interrogatories; 20 color photos of TRW
14 loading dock area; documents responsive to discovery
15 demand from plaintiff; 2012 OSHA Form 300.

16 And I'm going to have to find -- you want
17 to bear with me a moment -- the Affidavit. For some
18 reason, I don't have it in front of me, the
19 Affidavit. I don't -- I don't -- I've got all --
20 the whole file here and I just don't know where it
21 is. It's in here somewhere. If you want to take a
22 break and --

23 Q Okay. I'll help you out.

24 A Okay.

25 Q No, I'll help you out. I got it in

1 front of me.

2 The Affidavit is signed by you, I believe,
3 it's dated May 5, 2016, and it refers to the
4 deposition testimony of Miguel Urjiles.

5 Do you recall also reviewing the deposition
6 testimony of the driver in rendering your opinions
7 in this case?

8 A Yes, sir.

9 Q Okay. In addition to those we just
10 discussed and since you authored your report and
11 your Affidavit, have you reviewed anything else?

12 A Other than supporting like, for example,
13 FMCSA, which if you go into the report --

14 Q That's contained within your
15 report, however; isn't that correct?

16 A That's correct.

17 Q I'm talking about after you
18 prepared your report and Affidavit, did you review
19 anything in addition?

20 A No, sir.

21 Q Do you know who Donald Wilcutt is?

22 A Is that from ESI? I just --

23 Q No.

24 A Donald Wilcutt?

25 Q Correct.

Page 21

1 A It sounds -- it sounds familiar, but this
 2 not being a memory test, it's not coming to me right
 3 now.

4 Q So if he's authored opinions in
 5 this case related to causation, you wouldn't know
 6 what those are; is that direct?

7 A Is Wilcutt from ESI, if I can ask you that
 8 question?

9 Q No, he is not.

10 A Okay. Then --

11 Q No, he is not.

12 A -- I don't recall seeing it.

13 Q Okay. It's not --

14 A I'm not saying for absolute certain that I
 15 did not review it, but -- and if I did review it and
 16 there was no follow-up Affidavit, then there would
 17 have been no additional opinions.

18 Q Okay.

19 A That -- that's the basis of -- that's how
 20 I'm able to make a determination. If I did review
 21 it and there's no follow-up Affidavit, then there
 22 would be -- there would be no additional opinions.
 23 It would not have changed the foundation or the
 24 opinions that I have authored. Fair enough?

25 Q Okay. Fair enough.

Page 23

1 the Court said that they had an OSHA expert that was
 2 already retained by the side that I was -- that I
 3 was engaged or retained by. So they simply said
 4 that they didn't want redundancy. That was the only
 5 time, so far as I recall -- so far as I recall, of
 6 course.

7 Q Okay. Are you familiar with the
 8 Michigan OSHA regulations or MiOSHA?

9 A Not in specific, no, sir.

10 Q Have you ever provided expert
 11 testimony in Michigan, either state or federal?

12 A I believe that I have. I provided -- as
 13 a -- as an expert witness, has not gone to trial,
 14 though. I didn't testify in trial. I believe that
 15 I have done cases in Michigan in the past, though.
 16 I'm pretty certain I have.

17 Q In coming to the opinions that you
 18 have in this case, did you do any modeling or
 19 testing of any kind?

20 A The only -- the only testing I did was at
 21 the time that we did the PCI or the postcrash --
 22 postincident inspection.

23 Q At that point in time, you would
 24 have taken photographs as well; is that correct?

25 A That's correct.

Page 22

1 The gentleman from ESI, his name is Dr. Jim
 2 Sprague.

3 A Right.

4 Q Have you reviewed his report?

5 A Yes, sir.

6 Q So that would be something that you
 7 reviewed after the -- at least your report; is that
 8 correct?

9 A I believe so, yes. I -- yes, it would have
 10 been, I'm relatively certain.

11 Q Do you know whether or not it was
 12 after you issued your Affidavit?

13 A I don't recall.

14 Q Would your invoicing reflect that?

15 A It -- it wouldn't -- it wouldn't
 16 reflect -- my invoicing would never reflect specific
 17 names of what I reviewed that day when you say
 18 document review or file review.

19 Q Okay. Have you ever been precluded
 20 as testifying by -- as an expert by any court?

21 A In Boston, one time I was precluded from
 22 partial testimony. It was regarding Federal Motor
 23 Carrier Safety Regulations, but I was not forbidden
 24 from testifying on that. I was forbidden from
 25 testifying on the OSHA part, and the only reason was

Page 24

1 Q Are those the only photographs that
 2 you've taken related to this matter?

3 A Yes, sir, and they would be on the jump
 4 drive as well or the Dropbox that's coming to you.

5 Q Have you looked at any animations
 6 to assist you in either rendering your opinions or
 7 presenting those to the jury?

8 A No, sir.

9 Q Have you prepared any demonstrative
 10 evidence at any point in time related to this
 11 evidence?

12 A No, sir.

13 Q Other than the subject trailer,
 14 have you inspected any other exemplars in assistance
 15 with formulating your opinions in this case?

16 A No, sir, other than dealing with PosiLok's
 17 in the past, nothing specific than MaxiLok.

18 MR. CONCANNON: Eric, I'm sorry to
 19 interrupt. I wanted to make a clarification for the
 20 record so you're not misled. There are dozens of
 21 photographs that Mr. Turner has taken. I will be
 22 utilizing several of those for purposes of his trial
 23 testimony which will be captured by video.

24 He's not preparing anything new for me.
 25 They've already been prepared and you've already

1 seen them, but I wanted to make sure you weren't
 2 misled into thinking that no pictures would come in
 3 at trial.

4 BY MR. CONN:

5 Q No. We discussed the fact that you
 6 took pictures, Mr. Turner; is that correct?

7 A That's correct.

8 Q Okay. But you haven't taken
 9 pictures of anything that was not either equipment
 10 or a part of the trailer or the equipment that was
 11 involved in this incident; is that correct?

12 A That is correct.

13 MR. CONN: Let's go off the record
 14 for just a second.

15 (Whereupon there is a discussion
 16 held off the record.)

17 BY MR. CONN:

18 Q Sir, have you reviewed or relied
 19 upon any scholarly articles in the preparation of
 20 your opinions?

21 A No, sir.

22 Q You understand that when this
 23 particular trailer is alleged to have collapsed,
 24 Mr. Goodman was on a high/low?

25 A Yes, sir.

1 Q Do you recall how fast Mr. Goodman
 2 was traveling at the time this incident occurred?
 3 And by "incident," I'm referring to at the time the
 4 trailer fell.

5 A Well, there is nothing that can break down
 6 the speed limit because they don't have speedometers
 7 on them, nor would there be such as an EMC on a
 8 forklift that would break down a specific speed;
 9 although the testimony said that he was -- he was
 10 going in at a decent pace, something -- something to
 11 that effect. But there's nothing that would break
 12 that down into specificity as he was doing 5 miles
 13 an hour, 15 miles an hour or 10.

14 Q If I told you that his testimony
 15 was he was moving quite fast immediately before the
 16 incident occurred, would you have any reason to
 17 disagree with that?

18 A No, sir. That's what I -- that's what I
 19 was referring to is that he was moving at a -- at a
 20 reasonable speed or a quicker speed or whatever the
 21 phraseology was that I used.

22 Q He said "quite fast," but you bring
 23 up a good point. You don't know whether or not the
 24 speed that he was traveling was reasonable; is that
 25 correct?

1 Q Do you have any special training or
 2 certification in the use of high/lows?

3 A I am trained and I've also trained
 4 people -- folks on forklift operations, which is --
 5 falls under 1910.178 of OSHA.

6 Q Is that federal OSHA or is that
 7 particular to New Jersey?

8 A That's -- no, it's federal. That's
 9 federal. There's no specific New Jersey OSHA. It's
 10 federal.

11 Q You understand that Michigan has
 12 its own OSHA standards; is that correct?

13 A That is correct. But so far as I
 14 understand, they've adopted most of OSHA. I don't
 15 know specific stuff.

16 Q As it pertains to this case, do you
 17 have any opinions as to the training that
 18 Mr. Goodman received on his high/low?

19 A No, sir. I -- I -- I didn't really --
 20 well, I didn't look at it specifically as a
 21 high/low-related matter. I did look at Mr. -- at
 22 the operator, Mr. Goodman's operating mannerisms,
 23 but I didn't -- I didn't specifically break it down
 24 into what did he -- what did he -- if he violated,
 25 anything like that at all.

1 A Well, I think that, you know, if you take
 2 10 people and put them on a side of a road and ask
 3 them how fast an 18-wheeler is going down the
 4 roadway versus how fast a car is going down the
 5 roadway, you're going to get 10 different answers
 6 and they can vary greatly as I've learned through
 7 deposition process and testimony. So what his
 8 perception of "quite fast" may be completely
 9 different than somebody else's quite fast.

10 So I don't really have -- I wasn't there at
 11 the time, so I can't testify exactly to speed.

12 Q So you don't have an opinion as to
 13 whether or not his speed was reasonable?

14 A I -- again, if he's using the phraseology
 15 "quite fast," I would say that might be a little bit
 16 too fast. I don't -- I can't say for certain,
 17 though, because, again, his definition of quite fast
 18 in a car may be 60 miles an hour; whereas mine might
 19 be 70 miles an hour, 75 miles an hour.

20 Q You understand that he's been a
 21 high/low driver for a bit of time prior to this
 22 incident; correct?

23 A Yes, sir. I just don't recall the time
 24 frame, though.

25 Q Okay. As an experienced high/low

Page 29

1 driver, would you agree with me that he would have
 2 some type of knowledge about what fast is on
 3 high/low and what slow is on a high/low?

4 A Well, again --

5 Q Would you expect that of somebody
 6 that you trained on a high/low?

7 A Again, it's really going to -- it's going
 8 to be an interpretation of the individual of how he
 9 perceives being fast. He may -- he may crawl around
 10 on a forklift on a regular basis, but for some
 11 reason there may have been a rush on a load where
 12 he's told to go quicker. So 5 miles an hour, 10
 13 miles an hour may be considered fast to him at that
 14 point in time.

15 So I'm not going to sit here and testify,
 16 outside of what his testimony was, "quite fast."
 17 I'm not going to assign a speed limit to that nor a
 18 statement of carelessness, recklessness or anything
 19 like that at all because it just would be -- would
 20 be beyond unfair.

21 Q We already talked about the fact
 22 that you prepared a report as a result of your
 23 retention in this case. Your report contains, I
 24 believe, 22 pages; is that correct?

25 A That's correct.

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1 Q And then I know you don't have it
 2 in front of you, we will need to find that at some
 3 point in time, but maybe we'll do that on a break,
 4 an Affidavit, which I'll tell you right now is two
 5 pages long; okay?

6 A Yes, sir.

7 Q Okay. Your report and your
 8 Affidavit contain your opinions in this case; is
 9 that correct?

10 A That's correct.

11 Q Have you authored any additional
 12 opinions since you prepared your report and your
 13 Affidavit?

14 A No, sir.

15 Q Have you been asked since you
 16 prepared your report and your Affidavit to review
 17 this matter and author additional opinions in other
 18 areas that are not already discussed in your report
 19 and Affidavit?

20 A No, sir.

21 Q Do you currently have any plans to
 22 author any additional reports -- or I'm sorry --
 23 opinions in this case?

24 A At this point in time, no, unless other
 25 evidence comes out at a later point in time. I --

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1 there's nothing else I have to offer.

2 Q To save you the time from reading
 3 them, is it safe to assume that the opinions that
 4 you have in this case are encapsulated on page 20
 5 and 21 of your report at numbered paragraphs 1
 6 through 8?

7 A That's correct.

8 MR. CONN: Let's go off the record
 9 for a second.

10 (Whereupon there is a discussion
 11 held off the record.)

12 BY MR. CONN:

13 Q While we're waiting to send that, I
 14 think we can go back on the record and at least talk
 15 about your report.

16 A Sure.

17 Q In reviewing your opinions, it
 18 appears to me that numbered paragraphs 1 through 6
 19 deal in various ways with your opinions that a
 20 proper visual inspection was not performed of the
 21 MaxiLok legs that rest on Axle 2; is that correct?

22 A That's correct. That's the heart of the
 23 matter.

24 Q Okay. Paragraph 7 is an opinion
 25 that deals with Dillon Transportation's alleged

Page 32

1 failure to properly train its driver; is that
 2 correct?

3 A That's correct.

4 Q And then paragraph 8 deals with
 5 Dillon Transportation's alleged failure to properly
 6 lubricate the MaxiLok system; is that correct?

7 A Yes, sir.

8 MR. CONN: Off the record.

9 (Whereupon there is a discussion
 10 held off the record.)

11 BY MR. CONN:

12 Q We can continue until that comes in
 13 now if you're ready.

14 A Yes, sir.

15 Q Based upon your review of the
 16 documentation referenced previously, can you tell me
 17 how it is you understand this incident to have
 18 occurred?

19 A Sure. Urjiles -- I'm always having a hard
 20 time with that.

21 Q Urjiles.

22 A Urjiles?

23 Q Urjiles, yup.

24 A I'm married to a Latino woman, you'd figure
 25 I'd know that. But Urjiles.

1 Mr. Urjiles, being a commercial motor
 2 vehicle driver, is required -- as a CDL driver as
 3 well, is required to inspect a commercial motor
 4 vehicle before use. So that's pretrip inspection.
 5 This would not be applicable to pretrip inspection.

6 It would be applicable to inspection of
 7 the -- the MaxiLok prior to backing the trailer --
 8 or excuse me -- once he elevates the trailer and
 9 drops it down onto the MaxiLok system, so activates
 10 the MaxiLok by activating the black button on the
 11 driver's side. Once he activates the MaxiLok
 12 system, he needs to observe, and it says right on
 13 the panel, that he -- that he has to, as a driver
 14 for safe operation, observe that MaxiLok to make
 15 sure that it's seated properly on the axle, on the
 16 Number 2 axle.

17 And when I'm saying Number 2 axle, not to
 18 be confused with the tractor as well. It would be
 19 Number 5 axle at that point, but Number 2 axle
 20 meaning the -- the axle -- Number 2 on the
 21 semitrailer.

22 Q That would be the rear-most axle on
 23 the trailer?

24 A That's correct.

25 Q Okay. I want to take a step back

1 dock to the trailer.

2 Mr. Urjiles -- Mr. Urjiles didn't examine
 3 that properly. If he had examined that properly,
 4 there's no way that that trailer would have
 5 collapsed when the forklift went -- had gone in on
 6 the fifth or sixth trip.

7 Q I'm going to stop you there for a
 8 second. You said Mr. Urjiles did not examine it
 9 properly. The examination that you're talking about
 10 is intended to make sure that those angle irons, as
 11 you referred to them, are properly seated over the
 12 axle; is that correct?

13 A That's correct.

14 Q Okay. So however a visual
 15 inspection occurs, if somebody confirms that those
 16 angle irons are over the axle, they've successfully
 17 performed that visual inspection; is that correct?

18 A If they absolutely confirm that they
 19 were -- they were seated properly as designed, then
 20 that would be correct.

21 Q Now, you talked about what
 22 Mr. Goodman did. You said he went in about five or
 23 six times; correct?

24 A It was something like that, yes, sir. He
 25 had removed --

1 because you got a bit into your opinions, and I just
 2 want to know what your understanding is of how this
 3 incident itself occurred.

4 What was Mr. Urjiles doing? What was
 5 Mr. Goodman doing? How did the incident itself
 6 occur, if you could describe that for me?

7 A Sure. Okay. Well, in my opinion, the only
 8 way that it could have occurred is Mr. Urjiles
 9 backed his trailer up to the loading dock, and not
 10 fully up to the loading dock, but in the direction
 11 of the loading dock, and he went to set his MaxiLok
 12 system.

13 And how he does that, he gets out, pulls
 14 the actuator button. That activates the MaxiLok
 15 system and causes -- without belaboring all the
 16 details -- causes the MaxiLok to kick in and drop to
 17 a 90 degree from the road -- road angle, more or
 18 less, and sit right on top -- there's angle iron
 19 that will actually sit right on top of the axle as
 20 shown in my report and that will prevent the -- that
 21 will actually keep the trailer at an elevated
 22 position so that he can back it up to the loading
 23 dock in order to be able to safely be offloaded by
 24 either a dock plate or a -- some type of form of a
 25 gap separation or closure, if you will, from the

1 Q He was driving or not?

2 A He had removed --

3 Q He was driving a high/low.

4 A He had removed some pallets from the --
 5 from the trailer.

6 Q Okay. He was driving a high/low
 7 into and out of his trailer; is that correct?

8 A That's correct.

9 Q Do you know how much the high/low
 10 that he was riding in weighed?

11 A No, sir, I don't.

12 Q There are various kinds of
 13 high/lows; is that correct?

14 A Yes, sir.

15 Q There are some that are designed
 16 specifically for use indoors and there are some that
 17 are designed for use indoors and outdoors; correct?

18 A Well, there's all different types. There's
 19 construction high/lows. There's warehouse type,
 20 which would be the type that's applicable here.

21 Q Some high/lows weigh more than
 22 others?

23 A Yes, sir.

24 Q Mr. Goodman testified that he
 25 thought the high/low he was riding on weighed

1 approximately 16,000 pounds.

2 Any reason to disagree with that?

3 A No, that's usually about the average weight
4 that you're going to find and give or take a couple
5 thousand pounds.

6 Q You recall that Mr. Goodman
7 testified that the trailer collapsed when the front
8 wheels of his 16,000-pound trailer hit the floor of
9 the trailer on that fifth or sixth trip into it --

10 A On the tailboard.

11 Q -- do you recall that testimony?

12 A On the tailboard, yes, sir.

13 Q That's right.

14 When we talk about tailboard, we're talking
15 about the wood flooring within the trailer; correct?

16 A Well, usually in the back section, there's
17 typically a section of diamond plate and then you'll
18 get wood flooring after that on the decking. But
19 there's a section of diamond plate that's about two,
20 three feet long depending on the manufacturer. This
21 being a Great Dane, I would imagine it's probably
22 three feet and then you have wood decking after that
23 typically.

24 Q Does the dock plate usually cover
25 that diamond plating that you're referring to?

1 approximately 10 inches, and you take a little bit
2 of issue with that in your report; is that correct?

3 A I do. And the reason is is that they used
4 their measurement -- it's an engineering stick.
5 They used their measurement engineering stick a few
6 feet in from the back of the tailboard of the
7 trailer, and I used it -- I did the measurement at
8 the very back of the tailboard of the trailer, which
9 would be more relative to where he was when he
10 entered into the trailer itself. So that's where I
11 did my measurement to get a full understanding of
12 the full drop it would have happened.

13 Q I'm sorry. What was that?

14 A I -- there was somebody outside.

15 Q Oh, okay.

16 Do you agree with me that the axle weight
17 would have been its greatest on Mr. Goodman's first
18 trip into the trailer?

19 A Repeat that question again. I'm sorry. I
20 was distracted by the door and all.

21 Q No problem.

22 Do you agree with me that the axle weight
23 would have been its greatest when Mr. Goodman first
24 entered the trailer to remove that first pallet?

25 A That's correct.

1 Q You said earlier that you reviewed
2 Mr. Urjiles' deposition testimony; is that correct?

3 A That's correct.

4 Q Do you agree with me that he
5 received, at a minimum of 30 minutes of training
6 from his employer on the Hendrickson MaxiLok system?

7 MR. CONCANNON: Eric, I'm sorry,
8 you cut out on that. Could you repeat that?

9 MR. CONN: Sure.

10 Madam Court Reporter, did you get it.

11 THE COURT REPORTER: Yes.

12 MR. CONN: Could you repeat it,
13 please.

14 (Whereupon the last question is
15 read by the reporter.)

16 MR. CONCANNON: Thank you. I
17 didn't know that.

18 A I don't recall that in deposition. To be
19 quite frank, it was some time ago that I read it.
20 I don't recall specifics as to how long his training
21 was or the effectiveness of his training, but I look
22 at it from an effectiveness standpoint. He didn't
23 inspect.

24 BY MR. CONN:

25 Q He did inspect, is that what you

1 A It typically does, yes.

2 Q Okay. So --

3 A At least part of it.

4 Q So that was --

5 A At least part of it.

6 Q Well, when we talked about the fact
7 that his front wheels would have been hitting the
8 trailer then, is it safe for us to assume, or isn't
9 it, that he was on wood at that point in time?

10 A Not necessarily. It could have been the
11 diamond plate, partly the diamond plate. It could
12 have been the wood. It all depends. It depends on
13 the dock leveler system as well. It depends on what
14 they were actually utilizing.

15 Q I'm going to go through a list of a
16 couple of things to see if you and I have a similar
17 understanding about the facts and evidence in this
18 case. Let me know if you agree or disagree with
19 each of these.

20 First, do you agree with me that the
21 trailer dropped between 10 and 11 inches?

22 A It -- I would say 11 inches, yes, that
23 would be -- was my -- my understanding as -- as from
24 the inspection.

25 Q Okay. ESI believes that it was

<p>1 said?</p> <p>2 A He did not inspect, clearly by what had</p> <p>3 occurred.</p> <p>4 Q Okay. That's your testimony.</p> <p>5 This incident occurred on April 26th, 2012;</p> <p>6 is that correct?</p> <p>7 A Yes, sir.</p> <p>8 Q Where were you on April 26th, 2012?</p> <p>9 A Oh, I have no idea.</p> <p>10 Q Were you in Michigan?</p> <p>11 A No, sir.</p> <p>12 Q Okay. You weren't looking over</p> <p>13 Miguel Urjiles's shoulder when he was raising this</p> <p>14 particular trailer; is that correct?</p> <p>15 A No, sir.</p> <p>16 Q Okay. So you don't have any</p> <p>17 personal knowledge as to whether or not he performed</p> <p>18 an inspection; is that correct?</p> <p>19 A It's based on the failure. It's based on</p> <p>20 the analysis of the failure.</p> <p>21 Q All due respect, that wasn't my</p> <p>22 question.</p> <p>23 My question was, you don't have any</p> <p>24 personal knowledge of whether he inspected; is that</p> <p>25 correct?</p>	<p>1 inspection?</p> <p>2 A I believe I recall that, yes.</p> <p>3 MR. CONCANNON: Don't answer. I</p> <p>4 object to the form. You haven't given a particular</p> <p>5 timeframe where Paul was, whether he was on a</p> <p>6 high/low or not. It's vague as phrased.</p> <p>7 Mr. Turner, please answer, if you can.</p> <p>8 BY MR. CONN:</p> <p>9 Q You can go ahead again.</p> <p>10 A You want to repeat that, please.</p> <p>11 Q Sure. My question was: Did Paul</p> <p>12 Goodman testify that he didn't see Miguel Urjiles or</p> <p>13 that he watched him and determined that he didn't</p> <p>14 perform an inspection?</p> <p>15 A I don't recall, but I believe -- with</p> <p>16 absolute certainty, I don't recall, but I do believe</p> <p>17 that he said something to that effect.</p> <p>18 Q Okay. I don't want you to guess.</p> <p>19 A No, no. I got --</p> <p>20 Q So if you don't know, that's</p> <p>21 perfectly fine for you to say that.</p> <p>22 A Right, right. I'm not absolutely certain,</p> <p>23 I just don't recall.</p> <p>24 Q Okay. You read Ashley Ousterhout's</p> <p>25 deposition, too; is that correct?</p>
<p>1 A All I could say to you is that there's no</p> <p>2 way that it could have been inspected properly for</p> <p>3 this failure to have occurred.</p> <p>4 Q I appreciate your opinions, and</p> <p>5 we'll talk about those in a second. My question is</p> <p>6 pretty simple, though.</p> <p>7 You don't have any personal knowledge</p> <p>8 because you weren't there to determine whether or</p> <p>9 not he performed a visual inspection; is that</p> <p>10 correct?</p> <p>11 A No, physically I was not there, but based</p> <p>12 on analysis.</p> <p>13 Q Okay. So you weren't there, so you</p> <p>14 don't know personally whether he had performed an</p> <p>15 inspection; is that correct?</p> <p>16 A Personally observing him? Are you --</p> <p>17 Q Correct.</p> <p>18 A I was not there personally observing him,</p> <p>19 that's correct.</p> <p>20 Q Okay. You read the deposition</p> <p>21 testimony of Paul Goodman; correct?</p> <p>22 A That's correct.</p> <p>23 Q Did you read in Paul Goodman's</p> <p>24 deposition testimony that he was watching Miguel</p> <p>25 Urjiles, and he didn't see him perform an</p>	<p>1 Page 42</p> <p>1 A I'm sorry?</p> <p>2 Q Ashley Ousterhout, she testified in</p> <p>3 this case and you read her transcript; correct?</p> <p>4 A Correct.</p> <p>5 Q She didn't testify that Mr. Urjiles</p> <p>6 did or didn't perform an inspection, right; she</p> <p>7 didn't know?</p> <p>8 A She did not know.</p> <p>9 Q Okay. You told me earlier that you</p> <p>10 were hired to be an independent consultant in this</p> <p>11 case and that you were supposed to look at the</p> <p>12 evidence in this case to evaluate what happened.</p> <p>13 Were you -- do you agree with me that you</p> <p>14 are discounting Mr. Urjiles's deposition</p> <p>15 testimony --</p> <p>16 A No. I'm not discounting --</p> <p>17 Q -- and don't believe he performed</p> <p>18 an inspection as he testified he did?</p> <p>19 A As a retained expert, I have to analyze the</p> <p>20 testimony of the persons that are involved and I</p> <p>21 have to analyze the -- the facts of what I see when</p> <p>22 I examine a commercial motor vehicle. In every case</p> <p>23 I do, 50-some-odd cases a year, I have to analyze.</p> <p>24 And I've seen, you know, a lot -- a lot of things</p> <p>25 come back that -- after doing an analysis, that</p>

1 could not have been what was said in deposition
2 transcript.

3 So I look at this here and analyze what
4 Mr. Urjiles said versus what, in my opinion, my very
5 strong opinion what had occurred, and they just
6 don't match.

7 Q All -- all due respect, your very
8 strong opinion, you would agree with me, is not
9 borne out by the evidence in this case that's
10 admissible at the time of trial; is that true?

11 MR. CONCANNON: Object to the form.
12 It's argument. We don't know what's going to be in
13 at trial when he testifies.

14 You can answer.

15 MR. CONN: We certainly know what
16 the deposition testimony of Mr. Urjiles is.

17 BY MR. CONN:

18 Q You can answer the question, sir.
19 Go ahead.

20 A Repeat it again, please.

21 MR. CONN: Madam Court Reporter.
22 (Whereupon the last question is
23 read by the reporter.)

24 A No, that's not true. The evidence -- part
25 of the evidence --

1 A I have a right to finish my answer.

2 Q You did.

3 A Sir, I have every right to answer fully the
4 way that I see fit. It's not a yes-or-no answer.
5 The answer is correct. However, I -- I have read
6 depositions of drivers in many cases in the past
7 that have testified that they've done a pretrip
8 inspection, and I come to find out that at the time
9 of the crash, two, three, four hours later that
10 there were numerous violations on the commercial
11 motor vehicle such as brake adjustments and so
12 forth.

13 So I have -- as an expert, I have to look
14 at and examine everything involved with the crash or
15 with the incident.

16 MR. CONN: I move to strike the
17 nonresponsive portions.

18 BY MR. CONN:

19 Q Sir, you said you reviewed some
20 additional documentation after you formulated your
21 opinion. The documentation that you provided today
22 included a motion for Summary Judgment that was
23 prepared by my office. Did you read that?

24 A Give me a minute. I'll have to locate it
25 here.

1 BY MR. CONN:

2 Q Well, you testified --

3 A Part of the evidence is the inspection that
4 I did on the commercial motor vehicle, on the
5 semitrailer. So that's part of the evidence.
6 That's very, very strong, incontrovertible piece of
7 evidence that I examined very closely being an
8 experienced commercial motor vehicle expert, and I
9 was able to make a determination that the only way
10 that this could have occurred would have been by
11 the kick -- what I refer to as kickstands being
12 improperly seated.

13 Q But you weren't there on the date
14 this incident occurred; is that correct?

15 A That's correct.

16 Q And Mr. Urjiles has testified he
17 performed a visual inspection and that the legs or
18 arms on the MaxiLok system were secured over the
19 axle; is that correct?

20 A Sir, I will say that's correct. However, I
21 have read deposition --

22 Q Okay.

23 A No, no. Sir, I do have a right to finish
24 my answer.

25 Q Let me --

1 Q I don't need you to actually find
2 it. We're not going to talk about it, but I just
3 want to know if it was something that you reviewed.

4 A Yes, sir, it is.

5 Q Okay. Were you provided a -- a
6 copy of the Court's opinion and order related to
7 that motion?

8 A Yes, sir.

9 Q Okay. Did you read that?

10 A I did.

11 Q Okay. Do you agree with me that
12 the MaxiLok system requires the operator, in this
13 case Mr. Urjiles, simply to activate a knob and wait
14 for the system's complete before performing a visual
15 inspection?

16 A That is -- that is correct.

17 Q Okay. The system itself determines
18 how high it's going to go; is that correct?

19 A That's correct.

20 Q Mr. Urjiles doesn't have to adjust
21 the height of the trailer in any way; does he?

22 A No, sir, he -- it's all automated.

23 Q And this isn't the type of switch
24 that he has to push continuously; right? It's one
25 that he pulls and he lets go?

1 A That's correct.

2 Q Do you agree with me that
3 artificial light, such as a flashlight, is not
4 required to make a visual inspection on the MaxiLok
5 system and where the location of the arms are?

6 A What time of the day? What hours? What
7 lighting is available in the area, the ambient
8 lighting? I mean, it's -- you know, if it were
9 midnight, certainly it would require a flashlight.
10 If it's in the middle of the day and it's shaded
11 behind a building next to a loading dock, there is a
12 very good potential that a flashlight should be
13 utilized in order to make that determination.

14 Q So there are factors that you would
15 take into consideration before making that opinion;
16 is that correct?

17 A Sure.

18 Q Such as, for example, whether it's
19 winter or summer and when the sun rises and the sun
20 sets?

21 A Shading as well.

22 Q Okay. You would also take into
23 consideration things such as cloud cover?

24 A Yes.

25 Q Whether it's raining, snowing,

1 Did you pull weather reports for this day?

2 A Yes, sir. It's on the jump drive -- the
3 jump drive that you have, all the data.

4 Q Okay. I don't see it listed on
5 page 21 of the documents you reviewed in this case.
6 Is it there and I'm missing it?

7 A Yes, sir. If you look at page 22, the
8 second bullet point down says "Weather Source."

9 Q Oh, I apologize for that.
10 Is that a website?

11 A Yes, it is.

12 Q Okay. Did you pull it -- the
13 official weather record for that area on that
14 particular day?

15 A I did, and it's -- like I said, it's on the
16 Dropbox that you should have in front of you
17 shortly.

18 Q Okay.

19 A And the word "intermittent overcast" is
20 quoted on that document.

21 Q That comes directly from the
22 document is what you're saying?

23 A Yes, sir. It's not my analysis.

24 Q Okay. You understand this incident
25 occurred at 10 a.m. --

1 anything of that nature?

2 A Well, on that particular day, there was
3 intermittent overcast. You know, pulling the
4 weather report on this, there was intermittent
5 overcast, which would cast shadows potentially on
6 the subject, maybe behind the building, things of
7 that nature. So we have to look at all of those,
8 and is there potential for shading. Even if it's in
9 a broad daylight, you could be sunblind by looking
10 at the side of a white trailer and you look
11 underneath that trailer in the dark, you may not get
12 a full observation of what you're looking at.

13 So I would say that a flashlight is not
14 mandated, but a proper inspection is mandated. So
15 whatever tools are necessary to make that proper
16 inspection effective, then yes, I would say a
17 flashlight would have been beneficial.

18 Q Would that be in the discretion of
19 the driver based upon what he or she can see when
20 looking at the system?

21 A Yes, sir.

22 Q Okay. You just brought up
23 something interesting. You said what the weather
24 condition was or the cloud cover was on the day this
25 incident occurred.

1 A I do.

2 Q -- or thereabouts?

3 A Yes, sir. Roughly.

4 Q Okay. The intermittent cloudiness,
5 does that come from the 10 a.m. observations, as you
6 recall?

7 A So far as I recall, yeah. It gives you a
8 blow-by-blow throughout the day, if you will, of the
9 weather conditions. And I believe at that
10 approximate time, there was intermittent overcast.
11 Again, that's so far as I recall.

12 Q And again, you weren't there, so
13 you don't know if it was the intermittent part where
14 it was overcast or not when Mr. Urjiles performed
15 his inspection of the legs on the PosiLok system;
16 correct?

17 A I could just go by what I -- what I read
18 from the weather source. If they say -- if they say
19 it's intermittent overcast at that point in time at
20 that day, on a given day, that's all I could report
21 on my report. I'm not a weather expert.

22 Q Okay. At the inspection of the
23 trailer that you attended in Ann Arbor, Michigan,
24 can you tell me, were you able to get the trailer to
25 unseat properly?

1 A Well, I gave a -- what I refer to as an
 2 exemplar of that particular position of it being
 3 unseated of what I suspect at that -- it would have
 4 gotten hung up as, and that would be the photograph
 5 that you referred to earlier on page 16, Photo
 6 Number 11, Source SLTC-PCI. And it shows -- it
 7 showed that angle iron sitting partially off and
 8 hanging up on the axle itself.

9 Q You don't know whether or not
 10 that's the way that system looked on the day this
 11 incident occurred; is that correct?

12 A That -- no, I don't know for certain
 13 because I certainly was not under the trailer when
 14 this occurred on the date of the incident, but logic
 15 and looking at this from an analysis standpoint,
 16 that's the only answer that could be as to what
 17 occurred.

18 Q Do you know where Mr. Urjiles was
 19 when this incident occurred?

20 A I believe he was in his tractor.

21 Q In the sleeper birth or in the
 22 seat?

23 A I believe he was in the sleeper birth
 24 looking at a magazine or something. I don't recall
 25 exactly.

1 time, I would agree with that.

2 Q In fact, all the controls for the
 3 raising and lowering of the PosiLok -- I'm sorry --
 4 the MaxiLok system are on the side of the trailer;
 5 is that correct?

6 A On the -- on the driver's side, that's
 7 correct.

8 Q Do you agree with me that based
 9 upon the timing of the incident and the fact that
 10 the plaintiff was going quite fast in his
 11 16,000-pound fork truck, that the presence of the
 12 high/low contributed to this incident?

13 MR. CONCANNON: Object to the form.

14 A No, I don't agree with that. I -- the -- I
 15 don't agree that it would be a contributory factor.

16 BY MR. CONN:

17 Q I'm sorry. You're done?

18 A Yes. Yes, sir.

19 Q Okay. You believe it's merely
 20 coincidental that the trailer fell when the high/low
 21 first put its wheels on the trailer the fifth or
 22 sixth time?

23 A Well, he's replacing weight as well. So
 24 you're replacing weight, you're pulling pallets off
 25 and replacing it with the forklift as time goes on

1 Q Do you agree with me that
 2 Mr. Urjiles being in the sleeper birth has no causal
 3 bearing on this incident?

4 MR. CONCANNON: Object to form.
 5 You haven't defined "this incident."

6 You can answer, Scott.

7 BY MR. CONN:

8 Q We talked about it already. I did
 9 define it previously. And, sir, I will refer to the
 10 incident as when the trailer falls as the incident.
 11 You understand that?

12 A Okay. Put all that together in one
 13 question, if you would, I'd appreciate it.

14 Q Okay. I just need you to affirm
 15 that you understand --

16 A Yes.

17 Q -- when I refer to the incident,
 18 I'm talking about when the trailer falls.

19 A Going forward, I do understand that, yes,
 20 sir.

21 Q Thank you.

22 Do you agree with me that Mr. Urjiles'
 23 presence in the sleeper birth has no causal bearing
 24 on this incident?

25 A Being in the sleeper birth at that given

1 into the fifth or sixth pallet. So in replacing
 2 weight, these trailers, these MaxiLoks and PosiLoks,
 3 for that matter, are designed in such a way that --
 4 and if you look at the report of ESI, they're
 5 even -- they are even -- without -- they are
 6 unwittingly stating that that pos -- or the MaxiLok
 7 kickstand legs couldn't kick out unless the air
 8 system was deflating.

9 If you -- if you -- if you read the report
 10 and if you'd like me to explain further, I can. So
 11 the -- let me explain it this way.

12 Q My -- my question --

13 A Let me --

14 Q No, no. My question was -- my
 15 question was pretty simple.

16 A Go ahead.

17 Q My question was: Do you believe
 18 it's coincidental that this trailer collapsed right
 19 when the 16,000-pound, quite fast moving high/low,
 20 put its tires in the trailer?

21 A Yeah. I did get kind of lost on that
 22 question; didn't I?

23 Q I thought so.

24 A I -- I would say that the -- if you're
 25 looking at a -- at a causal effect and you were to

1 look at it from a percentage basis, 99 percent of
 2 this is the fact that those kickstands were not
 3 placed properly.

4 Then you're looking at the lubrication
 5 factor. No matter what weight you put in there,
 6 whether it's a forklift, which is doing its job by
 7 going inside this trailer and pulling pallets off --
 8 and again, speed is subjective here, very
 9 subjective. I can't -- five miles an hour with a
 10 forklift may be considered very fast, for one. I've
 11 already gone through that.

12 So I don't look at the forklift as being
 13 causal. I look at the fact that the -- that the
 14 kickstands were not properly -- were not properly
 15 seated and then the potential -- the high -- the
 16 likely probability of the failure of lubrication of
 17 the system, which would be causative to the
 18 incident.

19 Q So you believe it's coincidental?

20 A Again, you could have taken a forklift in
 21 there at two miles an hour, and just by the
 22 movement, any movement at all, with something
 23 sitting, as I demonstrated in the photograph in my
 24 report and I believe it was on, again, page 16,
 25 Photograph Number 11, looking at that photograph,

1 that, to me, in my mind, clearly says to me that
 2 that is just waiting for the slightest maneuvering
 3 going on inside that trailer to cause those
 4 kickstands to kickback. And that, in my opinion, is
 5 what occurred here.

6 Q Would you agree with me that the
 7 slightest maneuvering in this particular case was
 8 the presence of the 16,000-pound high/low?

9 MR. CONCANNON: Object to the form.
 10 Calls for him to speculate.

11 You can answer, Scott.

12 A It could have also been from people walking
 13 in there. I can't answer that question for you. I
 14 can't without absolutely certainty say -- I can't
 15 without absolute certainty say that a forklift
 16 that's doing two miles an hour or a forklift that's
 17 doing four miles an hour or six miles an hour, which
 18 you're not going to go very much -- you're not going
 19 to go much faster than that inside of a trailer.
 20 You just don't do that. It's just not going to
 21 happen. You can't maneuver a forklift that quickly
 22 inside of a trailer. I've been there. I'm
 23 experienced in this. So --

24 Q Let's play the fishing game.

25 Was there somebody walking inside the

1 trailer when this incident occurred?

2 A I don't recall. I don't believe so.

3 Q Okay. Well, you read the
 4 deposition testimony of Mr. Goodman; correct?

5 A Yes.

6 Q Okay. And he didn't testify that
 7 there was anybody walking around this trailer;
 8 right?

9 A Typically, there's not. I just can't -- I
 10 can't say for absolute certainty is what I'm saying
 11 to you.

12 Q Okay. You read the deposition
 13 testimony of Ashley Ousterhout?

14 A Yes, sir.

15 Q And she didn't say there was
 16 anybody walking in this trailer; correct?

17 A That's correct.

18 Q So we can eliminate that as a
 19 possibility based upon your understanding of the
 20 deposition testimony.

21 What other movement was happening inside
 22 this trailer based upon the evidence and that's
 23 admissible other than the 16,000-pound fork truck?

24 MR. CONCANNON: Object to the form
 25 and foundation.

1 You can answer, Scott.

2 A I don't know if prior to that -- I just
 3 don't know. I mean, could it have been a fork truck
 4 that's doing two or three, four miles an hour, five
 5 miles an hour, which you're not going to go very
 6 much faster than that in the back of a semitrailer.
 7 It's just not going to happen.

8 That being said, these kickstand legs --
 9 and this goes to the report of ESI, which really
 10 discounts their opinion, not -- not even -- it
 11 crushes their opinion, quite frankly, is that --
 12 it's like taking a car -- they say in their report
 13 is that -- that the only three ways that these
 14 kickstand legs could have kicked out was from it
 15 being broken or something else. I can't remember
 16 what it was.

17 But the third one, the most significant,
 18 was that it could be significantly out of
 19 adjustment. There's no verification one way or the
 20 other whether this was significantly out of
 21 adjustment. It's just like taking a car to a
 22 mechanic. You take a car to a mechanic and that
 23 noise was happening all week long until you pulled
 24 into the mechanic's driveway, and all of a sudden
 25 you find out that in your truck they can't find the

1 problem because it's not making that noise anymore.
2 So these kickstands --

3 MR. CONN: I move to --
4 A Go ahead.

5 MR. CONN: I'm going to move to
6 strike the nonresponsive portions.

7 BY MR. CONN:

8 Q You said that speed, whether it's
9 two miles an hour or what have you, of the fork
10 truck is important, and I didn't refer to speed in
11 my question, so I'm going to ask it again.

12 Could it be that the presence of a
13 16,000-pound fork truck caused this incident?

14 A The -- it wouldn't be -- it would not be
15 the cause. The cause is the failure to inspect the
16 kickstand legs. The presence of a fork truck doing
17 again -- and speed has an issue here. You can't --
18 it's not mutually exclusive. So speed being two,
19 four, six miles an hour, it's going to -- it
20 doesn't -- it's irrelative.

21 Q So let's go back to my original
22 question then.

23 A Sure.

24 Q Is the presence of the fork truck
25 and the immediate collapse thereafter merely

1 collapse and just collapses in and of itself. I
2 don't know that one way or the other. Could it have
3 happened? Certainly it could have.

4 Q But as to where the angle irons
5 are, you don't know one way or the other; correct?
6 You don't know if it's on the precipice or further
7 back or really where they are?

8 A Based on my analysis and based on observing
9 how this unit actually functions and works and my
10 knowledge of them in the past, I would say there's
11 no question in my mind about the way that this
12 occurred. It's almost impossible -- and I'm going
13 to say it's impossible -- for it to occur any other
14 way than to physically pick this trailer up, allow
15 the legs to kick out, if they were able to, because
16 they're spring-loaded, that's the only other way it
17 could happen if you used the forklift in the back to
18 lift it up.

19 I couldn't see it happening any other way,
20 and a very big forklift at that because of the
21 freight and the weight of the semitrailer.
22 16,000-pound forklift couldn't do it.

23 Q Do you agree with me that you are
24 taking the credibility of Mr. Urjiles' deposition
25 testimony into account in rendering your opinions?

1 coincidental?

2 A No, I wouldn't say it's coincidental. I
3 mean, if he's -- again, he's doing two miles an
4 hour, three, four, five miles an hour -- I hate
5 repeating myself, but I have no choice -- and he
6 goes and picks up a pallet, that's a lot of movement
7 that's going on. And if those -- if those angle
8 irons on the bottom of the kickstands on those wear
9 pads, what are referred to as wear pads, if they're
10 not properly seated, they stand a substantial chance
11 of being kicked out, and that's what occurred here.

12 Q Do you agree with me, then, that if
13 Mr. Goodman hadn't gone into the trailer on this
14 fifth -- fifth or sixth time, that the trailer would
15 not have collapsed?

16 A I couldn't answer that one way or the
17 other. I -- I don't know. It depends -- you know,
18 it's really going to, quite frankly, depend on how
19 unseated these wear pads, the angle iron -- angle
20 iron pads were actually off. I mean, the -- there's
21 a -- there's a --

22 Q You don't know --

23 A -- probability, sir, that they could have
24 sat there and watched this trailer for 15 minutes
25 because it was just sitting on the precipice of a

1 MR. CONCANNON: Object to the form
2 as argumentative.

3 You can answer.

4 A Absolutely I'm taking -- I'm taking it into
5 account, and I do that all the time when I'm looking
6 at drivers that say that they've done pretrip
7 inspections that clearly they haven't that were
8 causative to a crash with a commercial motor vehicle
9 four hours later, as I used that example prior.

10 BY MR. CONN:

11 Q If the legs were not seated
12 properly over the axle, you said a moment ago that
13 Mr. Urjiles had to back his trailer into the dock;
14 is that correct?

15 A That's correct. After he -- after he
16 elevated.

17 Q Right. And what I'm understanding
18 your opinion is, when he elevated it, the legs
19 weren't seated properly; is that true?

20 A That's correct.

21 Q That's one of your opinions?

22 A That's correct.

23 Q Okay. Wouldn't it be more likely
24 if he's backing the trailer into the dock, that the
25 legs would have collapsed at that time if you're

1 right and they were on a precipice?

2 A Not necessarily. I mean, again, you take
3 the -- you take your pickup truck to a mechanic and
4 it's not making that noise anymore. Not to repeat
5 myself.

6 Q Well, you talked about the fact
7 that there's weight that's taken into consideration,
8 and we've already agreed that the axle weight was
9 its greatest when Mr. Goodman first went in; is that
10 right?

11 A Well, you know, on that question --

12 Q Do you agree with that point?

13 A On that question -- let me rephrase that
14 answer, because it depends on how far back the
15 pallets are actually loaded onto the semitrailer.
16 Excuse me. Often pallets are loaded right to the
17 door, and if they're loaded right to the door, you
18 don't have room to get a forklift all the way in.

19 So essentially, you're using -- you have to
20 shift the dock plate or you have a dock leveler, and
21 you have to go in and pick the load -- the pallets
22 off the left side and barely your front wheels are
23 on the -- on the forklift are inside the trailer.

24 So you still have the back side, which is the --
25 where the counterweights are, which is very heavy,

1 still sitting on the dock leveler or the dock plate.

2 Now you go and pick up the pallet on the
3 right-hand side. So you've already moved two
4 potentially without -- without ever having to go
5 fully inside the trailer. So that's the rephrasing
6 of my answer from your prior question and this
7 question. So as he's going in, in the very
8 beginning, he may not have full weight of that -- of
9 that forklift in the semitrailer.

10 Q Well, that wasn't my question. My
11 question was what the axle weight was. You don't
12 know what the weight of the brake calipers he was
13 removing were; do you?

14 A No, but I -- I -- knowing the way that
15 components -- brake components like that are
16 transported, in all probability, in all probability,
17 we're looking at a total close to 80,000 GBWR -- or
18 not GBWR, gross vehicle weight, period.

19 Q You're speculating as to that;
20 isn't that correct? You don't know for sure?

21 A It's speculation, but just knowing the
22 weight of steel brake calipers, that would be a
23 pretty good educated guess based on experience.

24 Q Do you agree with me that at the
25 time the trailer dropped, that it was under the

1 exclusive control of TRW?

2 A At the time the trailer dropped, it was
3 under the -- no. No, sir.

4 Q Okay.

5 A If you look at the FMCSR, the FMCSR, that
6 driver has responsibility for that trailer from the
7 point that he takes it in the morning or the
8 beginning of his shift, whichever it is, to the time
9 that he signs off at the end of his shift. He is
10 the person responsible for that commercial motor
11 vehicle.

12 Q Do you agree with me that he had --
13 or I'm sorry -- that TRW had some control over the
14 trailer?

15 A I wouldn't say that they had control over
16 the trailer, no, sir. They were merely taking
17 freight out of the trailer. They weren't -- they
18 didn't have control over it.

19 Q So could Mr. Goodman have left at
20 any point in time he wanted to?

21 A I suppose that if he had an argument with
22 his dispatcher and he said I'm closing up the doors
23 and I'm leaving, he could have done that. Or if he
24 had an argument with the dock hands, and for
25 whatever reason, he could have closed his doors up

1 and left. There's nobody that could have stopped
2 him other than the threat of being fired.

3 Q Would you agree with me that's a
4 pretty strong consideration?

5 A As to what?

6 Q Being fired.

7 A Well, I'm saying --

8 Q Would he want to be fired for --

9 A I'm saying that he is in control of that
10 vehicle. Let me put it another way to you; all
11 right? If he sees something that is occurring that
12 is unsafe with his commercial motor vehicle, whether
13 it's by him or forklift operators or whatever, he
14 has the right to pull that trailer away from that
15 dock, close his doors up and say "I'm leaving." And
16 if he doesn't do that, he's responsible for the
17 actions.

18 Now, that goes to whistle blower laws
19 within the FMCSA or FMCSR where -- if he was fired
20 for that reason, he's protected. He's
21 well-protected.

22 Q Who was using the trailer at that
23 particular point in time?

24 A He's the driver. He's responsible.

25 Q I didn't ask that question. I

1 asked who was using the trailer.
 2 A He's using the trailer to bring freight to
 3 TRW. He is using the trailer to bring freight to
 4 TRW. TRW has a contractual commitment, written or
 5 verbal, to remove the freight from the trailer.
 6 That's the limit of it.

7 Q And they were using it to remove
 8 the freight; is that correct?

9 A That's correct. TRW.

10 Q And that would be through its
 11 employee Paul Goodman; is that correct?

12 A That is correct, but that's not a control
 13 matter.

14 Q Do you have any explanation for how
 15 this incident occurred at the fifth or sixth time
 16 and not at the first, second, third or fourth time?

17 A I guess it's kind of like playing a game, I
 18 can't remember what it's called, Jenga or something
 19 like that where you pull the little rectangular
 20 blocks out one at a time and eventually when you get
 21 to one where it's teetering and you think it's going
 22 to fall but it doesn't fall, and eventually your
 23 friend pulls the one out that you know is going to
 24 cause it to collapse and it collapses.

25 So it's not going to happen immediately.

1 So it's a series of events. So going in, eventually
 2 it gets disturbed to the extent that it relieves
 3 itself from that improper supported position.

4 Q You now have in front of you your
 5 Affidavit; is that correct?

6 A I have it in front of me, sir, yes. Mind
 7 if I take a quick read of it?

8 Q No, please do.

9 MR. CONN: We can go off the record
 10 while he's doing that.

11 THE WITNESS: Can we take a quick
 12 five, if we could?

13 MR. CONCANNON: Yes. A five-minute
 14 break. That's fine.

15 THE WITNESS: Great. Thank you.
 16 (Whereupon a short recess was
 17 held.)

18 BY MR. CONN:

19 Q Have you had a chance to look at
 20 your Affidavit?

21 A I did.

22 Q Okay. Are you ready to proceed?

23 A I am.

24 Q Okay. Sir, while we were on break,
 25 you had a chance to look at your Affidavit that

1 we've been discussing today; is that correct?

2 A Yes, sir.

3 Q And I'm going to paraphrase it a
 4 little bit, but essentially it confirms the fact
 5 that you read the deposition of Miguel Urjiles and
 6 then it bolsters your opinions in some respect; is
 7 that fair?

8 A That's fair.

9 Q Okay. It doesn't necessarily
 10 change any of your opinions that were in your
 11 report, though; is that correct?

12 A No, sir.

13 Q Okay. You cite in paragraph two of
 14 that Affidavit some questions and answers from his
 15 deposition testimony; is that correct?

16 A Yes, sir.

17 Q In paragraph three, you state --
 18 and I'm going to read it -- "The testimony offered
 19 by Miguel Urjiles causes for my opinions to be
 20 further substantiated, whereas Mr. Urjiles used an
 21 audible to determine that the semitrailer's MaxiLok
 22 assembly was properly secured before allowing dock
 23 workers to enter the semitrailer."

24 First question for you, did I read that
 25 correctly?

1 A Yes, sir.

2 Q Are you referring to the audible
 3 sounds that he refers to in his deposition?

4 A Well, it -- yes. It's that and -- yes,
 5 it's that and then there's also in my report
 6 something that reflects to that as well, not the
 7 audible, but the fact he didn't inspect. He didn't
 8 physically inspect it with his eyes, in other words,
 9 did not put a set of eyes on it.

10 Q And that's based upon -- strike
 11 that.

12 You did read, however, page 77 of his
 13 deposition testimony where he said that the
 14 inspection did, in fact, occur and that the legs
 15 were, in fact, over Axle Number 2?

16 A Well, I did. I did, yes. However --

17 Q Okay.

18 A -- in looking at my report, if you go to
 19 page 13, when it was freshest on his mind, he was
 20 asked about how he handled that and he gave a
 21 statement -- a signed statement on April 26th, 2012,
 22 where he said, "I lifted the trailer up when I was
 23 completed and then I backed into the dock." Never
 24 saying anything about inspecting it, and that was a
 25 key issue here. So I take that, in addition to the

1 fact that he just heard that, that whoosh sound from
2 the air and that was his methodology of inspecting.

3 So I have no evidence that says to me that
4 he actually visually observed that the wear pad,
5 angle irons were sitting on the axle.

6 Q Is that despite his deposition
7 testimony where he says that the legs were secure
8 over the axle?

9 A Well, he had time to think about it, so,
10 you know, I question -- I view his -- that part of
11 his deposition testimony into high question. And
12 the reason is, as I said, I've read many, many
13 depositions of drivers in the past where they have
14 said that they've inspected their vehicles prior to
15 their shift and it turns out that they have not.

16 Q So you are guessing in this
17 particular incident that Mr. Urjiles, with the
18 ability of reflection, made the determination that
19 it would be in his best interest to lie during his
20 deposition?

21 A I don't like to use the word "lie." I just
22 say that it's inconsistent with the facts.
23 Inconsistent with the facts of me inspecting the
24 vehicle and his prior testimony and the statement on
25 the 26th of April.

1 Q The statement itself says that he
2 lifted the system or something to that regard; is
3 that correct?

4 A Exactly what he said is, "I lifted the
5 trailer up. When it was completed up, then backed
6 into the dock." Says nothing about, in the middle
7 there where he inspected it or anything like that.

8 Then you go fast-forward to his deposition
9 where he says on April 15th, 2015, "No, that tells
10 me that the legs were already locked." So that was
11 his methodology was audible rather than visual.

12 Q Does the -- does the statement say
13 that he pushed the button to activate the system?

14 A He had to. He said -- and that would be --

15 Q Is that what he says?

16 A Counselor, that would be all part of --

17 Q It does say that; doesn't it, sir?

18 A That would be all part of "I lifted the
19 trailer up."

20 Now, inspecting is a totally different --
21 he didn't physically get under there with his arms
22 and lift it up, of course. He lifted the trailer up
23 by methodology of pulling the button; okay? That's
24 part of that, of course.

25 Then he doesn't say in here -- when it is

1 completed up, he doesn't say anything about being
2 inspected where he would say, at that point, he
3 should have said I then inspected, visually
4 inspected for proper seating. And then he would --
5 should have said I then backed into the dock. He
6 didn't say that. And then later in testimony he
7 said that he went by an audible.

8 Q Does Hendrickson -- well, he said
9 he went by an audible, but he said he also did a
10 visual; right?

11 A I just -- again, the visual --

12 Q Do we agree on that or don't we?

13 A The visual -- the visual doesn't -- either
14 he did an ineffective inspection or he didn't
15 inspect at all, which I believe he didn't inspect at
16 all based on the facts in front of me.

17 Q And what witness testified to the
18 fact that he didn't do an inspection?

19 A Again, you know, I -- I --

20 Q Well, what witness, sir? What
21 witness?

22 A No, there is no witness other than himself.

23 Q Okay. Hendrickson has instructions
24 as to how to operate this system; is that correct?

25 A Yes, sir. It's right on -- it's actually

1 right on the door, too, of the control panel.

2 Q Does Hendrickson consider the
3 inspection to be a part of operating the system?

4 A They do.

5 Q Okay.

6 A Well, let me back up --

7 Q I'm going to go to your --

8 A Let me back up on that, if I may,
9 because --

10 Q No. There's no question.

11 A I would like to fully answer the --

12 Q I'm going to go to the Court's
13 opinion and order --

14 A Sir, excuse me. One second.

15 Q I'll conduct my deposition the way
16 I want to.

17 A Sir, one second. I understand it's your
18 deposition, but --

19 Q I'm asking questions, and you're
20 giving answers. You've given your answer, let's
21 move on to the next question.

22 A No, sir. Your -- I understand it's your
23 deposition.

24 Q I will obtain an order --

25 A Sir, it's your deposition --

1 Q -- on Summary Judgment.
 2 A Sir, it's your deposition, I understand
 3 that, but I have a right to fully answer the
 4 question when it's posed to me.
 5 Q And you did.
 6 A No, I didn't fully answer it.
 7 Q I think you did.
 8 A All right. Would you look at -- if you
 9 look at page 12 --
 10 Q You said you wanted to go back.
 11 We're not going back.
 12 A If you look at page --
 13 Q We've already answered the
 14 question. We're moving on to the Court's opinion
 15 and order dated June 9, 2016.
 16 MR. CONCANNON: Move on, and we'll
 17 cover it on follow-up.
 18 THE WITNESS: Okay. Very good.
 19 A Go ahead, sir.
 20 BY MR. CONN:
 21 Q Court's opinion and order dated
 22 June 9, 2016, do you have that in front of you?
 23 A I -- I don't have it in front of me, no.
 24 Q Could you find it, please?
 25 A I should be able to, yes. The only thing I

1 have in front of me, sir, is I have the defendant's
 2 motion for Summary Judgment pursuant to Rule 56.
 3 That would have been in the electronic file, which
 4 would have been downloaded into the -- into the jump
 5 drive, which would have been forwarded to you, which
 6 you should have it there. I don't seem to have it
 7 in front of me, though. Because these are separate
 8 files.
 9 Q You don't have the --
 10 A I'm sorry.
 11 Q Okay. You don't have the opinion
 12 and order is what you're saying?
 13 A No, sir, I guess I don't. I only have the
 14 motion for Summary Judgment.
 15 Q Okay. No problem. We'll move on
 16 then.
 17 A Okay.
 18 Q Let's go back to your report and
 19 the enumerated paragraphs that have your opinions.
 20 Page 2, I believe, is where it starts.
 21 A Yes, sir.
 22 Q Okay. For Opinion No. 1, are you
 23 aware of any evidence or testimony that refutes that
 24 opinion?
 25 A Let me read it, if I may.

1 Q Absolutely.
 2 A Okay. The question was?
 3 Q Are you aware of any evidence or
 4 testimony that refutes that opinion?
 5 A No, sir.
 6 Q For Opinion No. 2 --
 7 A Well, opinions --
 8 Q -- are you aware of any evidence --
 9 A Let me back up. You have opinions from ESI
 10 obviously that are conflicting with my opinions.
 11 Outside of that, no.
 12 Q I'll tell you that neither your
 13 report or ESI's report are in evidence in this case.
 14 So when I refer to evidence, I'm talking about
 15 physical evidence or I'm talking about the
 16 deposition testimony when I say "testimony"; okay?
 17 A Okay. Very good.
 18 Q Okay. So I'm going to go back and
 19 I want to make sure we're both clear now.
 20 Are you aware of any physical evidence or
 21 testimony that refutes Opinion No. 1?
 22 A No, sir.
 23 Q Okay. Same question for Opinion
 24 No. 2, are you aware of any evidence or testimony
 25 that refutes it?

1 A Let me read it real quick.
 2 Q Please do.
 3 A No, sir.
 4 Q Opinion No. 3, are you aware of any
 5 evidence or testimony that refutes it?
 6 A No, sir.
 7 Q Opinion No. 4, are you aware of any
 8 evidence or testimony that refutes it?
 9 A No, sir.
 10 Q Opinion No. 5, are you aware of any
 11 evidence or testimony that refutes it?
 12 A I'm going to say no, sir. However, I'm
 13 going to add a blanket statement to this, to all of
 14 these opinions, and that is --
 15 Q Sure.
 16 A -- obviously, Mr. Urjiles has given, you
 17 know, testimony that would contradict with what
 18 my -- what my findings are.
 19 Q Okay.
 20 A Outside of -- outside of that, I don't
 21 believe so.
 22 Q Okay. Were we on -- I'm sorry. I
 23 lost track based upon your explanation. We were on
 24 5?
 25 A I believe we've already -- I said no on

1 number 5, I believe.

2 Q Okay. Number 6, are you aware of
3 any evidence or testimony that refutes it?

4 A No, sir.

5 Q Okay. And for 1 through 6, I
6 believe you're including your blanket statement that
7 you're conditioning it on the fact that Mr. Urjiles'
8 deposition testimony would contradict; is that
9 correct?

10 A That's correct.

11 Q Okay. And number --

12 A And as far as the training -- as far as the
13 training is concerned, obviously Dillon has a
14 different opinion of that, but I -- I stand by
15 my statement here, my opinions.

16 Q Okay. So we're onto number 7.

17 A Yes, sir.

18 Q Let me ask the question, then you
19 can give your answer.

20 A Sure.

21 Q My question is: Are you aware of
22 any evidence or testimony that refutes your Opinion
23 No. 7?

24 A Well, as I -- as I stated, number 7, Dillon
25 has, based on a driver cue file, they had a

1 April 26th, 2012; do you know?

2 A No. This is based on -- based on my
3 opinion of looking at the semitrailer at the time
4 that I inspected it, and I noticed that there was
5 not a substantial amount of lubrication on it, which
6 led me to that conclusion.

7 Q What was the date of your
8 inspection?

9 A April 14, 2015.

10 Q And the incident involved in this
11 case occurred April 26, 2012?

12 A Yes, sir.

13 Q So you're presuming the lubrication
14 of a trailer was deficient two years -- based upon
15 its condition, two years after the incident
16 occurred?

17 A No. This is just an analysis of mine
18 because it's the lubricant -- the lubricating point
19 that if friction were the causing factor, to keep
20 the kickstands from actually dropping into place
21 effectively 100 percent, then that would be a direct
22 causative factor.

23 And if that were not a problem in the
24 commercial motor vehicle industry, then, quite
25 frankly, you wouldn't see the Regulation 396.5 under

1 different opinion as to the training than what I
2 have here.

3 Q Okay. And then number 8, are you
4 aware of any evidence or testimony that's -- refutes
5 that opinion?

6 A There is -- not necessarily with
7 specifically lubrication. However, there was an
8 inspection that occurred afterwards that would --
9 would probably make an attempt to refute my opinion,
10 yes.

11 Q When you say make an attempt to
12 refute your opinion, what do you mean?

13 A Well, there -- I guess it's probably a poor
14 choice of words. That they -- they're trying to
15 make -- they're trying to draw the conclusion that
16 based on an inspection that occurred after the
17 incident, they sent it to a trailer repair facility
18 and the facility looked at it and said there is no
19 problem with it, with the -- with the MaxiLok
20 system. So that's my point there. That's the
21 information that's out there that may -- may be
22 something where somebody would have conflict with
23 what I'm saying.

24 Q Okay. Again, as far as what the
25 lubrication was of this particular trailer on

1 the FMCSR where it requires that motor carriers
2 lubricate their vehicles appropriately.

3 Q So again, going back, you don't
4 have any personal knowledge what the lubrication was
5 on April 26th, 2012; is that correct?

6 A No, sir, I don't.

7 Q Is it possible the system was
8 properly lubricated on April 26, 2012?

9 A I would say possible, but highly
10 improbable.

11 Q Highly improbable based upon what
12 evidence --

13 A Based on --

14 Q -- the fact that the trailer
15 collapsed?

16 A Again, the FMCSR -- if vehicles were always
17 lubricated the way that they're supposed to be in
18 accordance with manufacturer specifications, then
19 the FMCSR would never have written a regulation,
20 396.5, called lubrication specifically because it
21 wouldn't be a problem. But being that it is a
22 factor in incidents, in crashes and so forth, the
23 Federal Motor Carrier Safety Regulations do specify
24 that.

25 So looking at that logically, looking at

1 the unit, the only friction point that could occur
 2 there would be those two lubrication points. So it
 3 is a logical analysis performed by me as a
 4 commercial vehicle expert.

5 Q Two years after the accident
 6 occurred?

7 A Two years after the accident occurred.

8 Q Have you done any legislative
 9 history research to figure out what the purpose of
 10 that federal regulation is that you're citing to?

11 A Have I done any legislative history
 12 research on it?

13 Q Yeah. Did you -- did you go back
 14 and look and see why the federal regulators included
 15 that subsection?

16 A I know why. I don't -- I don't need to go
 17 back to regulations to make a determination why they
 18 put a regulation in place. It's common logic that
 19 they tell drivers not to utilize their -- or not to
 20 text for a reason, because it's a careless behavior
 21 that could lead to crashes.

22 So everything in the Federal Motor Carrier
 23 Safety Regulations -- and I emphasize "safety" -- is
 24 there for one reason; safety of both the motoring
 25 public and the drivers as well as dock workers. So

1 I look at that from a -- from a simplistic analysis
 2 of the Federal Motor Carrier Safety Regulations
 3 realize that drivers are not lubricating vehicles as
 4 they're supposed to in every case, and I have seen
 5 it literally hundreds, if not thousands of times
 6 where these were -- these were problematic.

7 In my experience, I have responded
 8 personally to over a thousand truck crashes, and
 9 I've seen a lot of these as a result of failure to
 10 lubricate.

11 Q So is it your testimony here today
 12 that the federal regulators had a particular idea in
 13 mind and you know what that idea was?

14 A Sure. To reduce friction points of areas
 15 of metal-on-metal that are supposed to be
 16 lubricated. That's exactly what it is.

17 Q Do you know what I'm thinking right
 18 now?

19 A Not really.

20 Q Okay. Would you agree with me that
 21 Opinions 1 through 6 in your report are based upon
 22 solely the fact that the trailer collapsed?

23 A Can you rephrase that another way, please?

24 Q Sure. My question was pretty
 25 simple. You're referring to the fact -- and we

1 already talked about this, so I want to make sure I
 2 guess we have agreement.

3 Opinions 1 through 6, we agreed earlier
 4 that they essentially state that Miguel Urjiles
 5 failed to inspect the legs on the MaxiLok system; is
 6 that true?

7 A That's true.

8 Q We agree on that?

9 A Yes, sir.

10 Q Okay. So my question for you is:
 11 Are all of those opinions that you have based upon
 12 failures that Mr. Urjiles performed is simply based
 13 upon the fact that this particular trailer fell and
 14 there had to have been a reason for it?

15 A A very specific reason, yes.

16 Q And that specific reason is
 17 essentially the trailer collapsed, and then you have
 18 to work back from there and figure out why; is that
 19 true?

20 A Correct.

21 Q Okay.

22 MR. CONN: Could we go off the
 23 record just a second, please?

24 THE WITNESS: Sure.

25 (Whereupon there is a discussion

1 held off the record.)

2 MR. CONN: All set?

3 A Yes. Just getting comfortable.

4 Q Hey, I'm all about comfort, so --
 5 in fact, if I didn't have a deposition this
 6 afternoon, I'd be in jeans, too. So I feel you.

7 A Oh, you saw that, huh? I thought I was
 8 doing a Sean Hannity here.

9 MR. CONN: Off the record.

10 (Whereupon there is a discussion
 11 held off the record.)

12 BY MR. CONN:

13 Q Did you speak with Mr. Concannon at
 14 any time within the last two or three weeks to
 15 prepare for your deposition?

16 A Uhm, yes. Actually -- no, no. Actually,
 17 not -- oh, no, I take it back. Yes, we did very
 18 briefly. Very briefly. I think it was maybe three
 19 or four days ago.

20 Q You say three to four days ago.
 21 Today is Thursday. Do you know if it was before or
 22 after Tuesday?

23 A I really -- I really couldn't tell you. It
 24 may have been Monday or Tuesday, I just don't
 25 recall.

1 Q Well, do you know if it was in the
 2 morning or the afternoon?
 3 A I would just say midday. I -- I don't
 4 recall. Actually, I think it was actually in the
 5 early evening, if I'm not mistaken.
 6 Q Let's turn to page 2 of your
 7 report, if you don't mind.
 8 A Okay.
 9 Q Down on the bottom there's a
 10 heading there that says, "3.0 General Description."
 11 Do you see that?
 12 A Yes, sir.
 13 Q The second paragraph there, the
 14 first sentence says, "Said unexpected precipitous
 15 collapse caused injury to Goodman," and then it
 16 continues on. We talked at the outset about the
 17 fact that you're not a doctor; is that correct?
 18 A That's correct.
 19 Q So you don't actually have a
 20 medical opinion as to whether or not this incident
 21 caused Mr. Goodman's injury; is that correct?
 22 A No.
 23 Q You defer to the medical doctors on
 24 that?
 25 A Yes, sir.

1 Q Next page, 3, under "Assignment,"
 2 that's where it encapsulates essentially -- and I'm
 3 going to quote from the last portion there of that
 4 first paragraph. Your job was to determine probable
 5 causation as to the semitrailer collapse that caused
 6 injury to plaintiff.
 7 Again, you're not saying that the collapse
 8 definitely caused injury because you can't opine as
 9 to that; correct?
 10 A That's correct.
 11 Q Okay. However, you were asked to
 12 formulate a causation opinion, if possible; is that
 13 right?
 14 A As to the -- as to the collapse itself.
 15 Q Yes. Of course.
 16 A Not -- not as to his injury.
 17 Q Not a medical opinion?
 18 A Correct. That's correct.
 19 Q Page 4, please.
 20 A Okay.
 21 Q Second paragraph, second sentence,
 22 you start off that sentence by saying, "Evidence
 23 indicates, as does the mere fact of the collapse
 24 itself and no reported damage to the semitrailer's
 25 MaxiLok system of the (sic) accident, that driver

1 failure was the main and most probable only
 2 contributing factor of the collapse."
 3 Did I read that correctly?
 4 A Yes, sir.
 5 Q Okay. We talked about the fact
 6 that the collapse itself is the basis for Opinions 1
 7 through 6 in -- that are later in the report, but
 8 you also say "evidence indicates."
 9 What evidence are you referring to there?
 10 A Well, evidence indicates, meaning the
 11 inspection that I did and everything that's in front
 12 of me here and everything -- everything you have in
 13 the jump drive.
 14 Q Okay. So it would include the
 15 documentation that you've produced to me today
 16 essentially; is that fair?
 17 A That's correct.
 18 Q Okay.
 19 A And the inspection as well.
 20 Q All right. I apologize. The
 21 inspection as well; yes?
 22 A Yes.
 23 Q Okay. Did you -- and forgive me, I
 24 don't have all the documentation from the jump file
 25 in front of me. Did you take measurements, draw on

1 the schematic, make drawings, diagrams, things of
 2 that nature at the inspection?
 3 A I -- I took -- I took dimensions. I took
 4 measurements, but I did not -- any -- any dimensions
 5 that are in here were essentially height drop and so
 6 forth of the trailer itself.
 7 Q Did you take notes at the
 8 inspection?
 9 A Uhm, no, I -- whatever was -- whatever
 10 notes would have been transferred right to the
 11 report.
 12 Q I got to ask that again because it
 13 sounds like you may have taken notes and used those
 14 notes to put information into your report.
 15 A Yes.
 16 Q So my question is: Did you take --
 17 A That would be part of the jump drive as
 18 well. It's right here showing it to you on the
 19 screen. That's the only notes, but they are all
 20 transferred in the report is my point. It's only
 21 one page. It's one page.
 22 Q Okay. Page 11, please.
 23 A Okay.
 24 Q You indicate there on the second
 25 paragraph, "The only two probable causes as to the

1 precipitous collapse that occurred would be that the
 2 kickstand legs were either damaged, whereas they
 3 were incapable of supporting the semitrailer, or the
 4 kickstand legs were not properly seated on the wear
 5 pads."

6 Did I read that correctly?

7 A That's correct, but within that, the
 8 kickstands were not properly seated would have been
 9 the lubrication aspect is involved in that as well.

10 Q Okay. And -- I mean, to be fair to
 11 you, that is an opinion that you have later in your
 12 report; correct?

13 A That's correct.

14 Q Okay. So now I'm done being fair
 15 to you.

16 A Okay.

17 Q It was a joke.

18 A Yep. No, I get it.

19 Q You said there were only two
 20 probable causes. Can you think of any other
 21 improbable causes?

22 A Not really. I mean, the --

23 Q As to the --

24 A -- the two probable causes I have --

25 Q I'm stuck in the phraseology of

1 lifted up the back of the semitrailer.

2 Q I understand that completely, but
 3 that is an improbable cause that you believe would
 4 not be based upon the evidence in this case?

5 A I wouldn't put it within the realm of
 6 possibilities, but I understand what you're saying.
 7 Okay. I understand.

8 Q And that's -- that's all I'm trying
 9 to get at because I'm trying to find out in your
 10 head did you take the entire world of potential
 11 causes and narrow it down to probable causes?
 12 That's what I'm getting at.

13 A Yes, sir, I did.

14 Q Okay. So there are improbable
 15 causes that you have considered, but for one reason
 16 or another ruled out?

17 A No. I -- I would say to you that there
 18 would be very, very -- they would be very minimal
 19 based on the design of the MaxiLok system. It
 20 really drew me to the -- almost immediate conclusion
 21 when I was inspecting the commercial motor vehicle
 22 out there or the semitrailer. So I really didn't
 23 have to take things that were out of reasonableness,
 24 that weren't reasonable, causative factors and have
 25 time to ponder things that really were impossible,

1 probable.

2 A Right.

3 Q So are they the only two causes
 4 that you can think of, or are there improbable
 5 causes that you can think of that you eliminated in
 6 some respect?

7 A No, sir. It's very cut and dry and simple
 8 far as I'm concerned.

9 Q So if I'm understanding you
 10 correctly, there are no improbable causes that you
 11 can fathom that would have led to this incident
 12 occurring?

13 A Outside of what I put down, no, sir. No,
 14 no. Improbable, there's no improbable causes,
 15 that's correct.

16 Q Well, we spoke a little bit earlier
 17 about the fact that if you took a much heavier
 18 high/low, I think you referred to it as, and you
 19 lifted up the back end, those legs -- I think you
 20 said with the springs, and correct me if I'm wrong
 21 here -- would cause the legs to spring back up.

22 Q Would that be an improbable cause?

23 A Yes. But there was no testimony that was
 24 provided where anybody said that there was, you
 25 know, a 40,000-pound forklift that came up and

1 such as a 45,000-pound forklift that would have
 2 lifted up the back of the trailer and caused the
 3 legs to kickback. Or I should say the nonsensical
 4 points, I don't -- I didn't consider.

5 Q Let's move to page 13.

6 A Okay.

7 Q Top of the page, I believe you're
 8 quoting the instructions that are contained on
 9 the -- or in the switch box --

10 A That's correct.

11 Q -- of the unit; is that correct?

12 A Yes, sir.

13 Q Would you agree with me based
 14 simply on Mr. Urjiles testimony and nothing further,
 15 he believes, or his testimony confirms, that he
 16 performed those two things?

17 A No, sir, he didn't. Matter of fact, if you
 18 go back to his -- if you go back to the -- that's
 19 where I put on -- in my report here on page 13,
 20 third paragraph, if you look at, first off, the
 21 second bullet point or arrow point there on that --
 22 on the page here, page 13, it says, "Do not attempt
 23 to load or unload the trailer without having both
 24 support stands resting on each axle." Forgive me.
 25 I meant the first bullet point.

1 "Verify that both support stands have swung
 2 into position over the axle and the springs have
 3 exhausted"; okay?

4 He didn't verify -- in my opinion, he did
 5 not verify because he said in the statement written
 6 that day, I lifted -- and it's in the page -- third
 7 paragraph here -- second paragraph on this report,
 8 page 13, "I lifted trailer up. When it was
 9 completed up, then I backed into the dock."

10 He didn't follow the instructions that
 11 clearly say to him that he needs to verify it.

12 Q Do you know what Mr. Urjiles
 13 intended when he said "when it is completed up"?

14 A After he heard -- he heard the -- what he
 15 referred to, I think, the whooshing noise or
 16 something to that effect. After he heard the --
 17 after he heard the air exhaust, that was what he
 18 made an assumption at that point that it was
 19 properly seated, that the trailer kickstand legs
 20 were properly seated.

21 Q Where do you glean that information
 22 from?

23 A Because if you look at the -- okay. Right
 24 here. If you go back to the -- my Affidavit, you
 25 can read on there where it says -- and where I quote

1 the incident.

2 Q But again, you don't know what he
 3 intended on the day closer to the incident what he
 4 meant by, "I lift the trailer up. When it is
 5 completed up, I'll then back into the dock"? You
 6 don't know what was in his head?

7 A Well, it's certainly not inspection,
 8 because if you look back here, again, go to the
 9 Affidavit, he says in testimony there, that based on
 10 his deposition, that he was able to determine based
 11 on -- based on the airbags deflating that the
 12 kickstand legs were accurate -- accurately -- or I
 13 shouldn't use accurately -- but properly seated.

14 Q I believe his deposition also says
 15 that he performed a visual inspection; isn't that
 16 true?

17 A Again --

18 Q So that way your Affidavit is based
 19 upon incomplete information?

20 A No, sir. I read his deposition, and the
 21 deposition said on page 77 that he said that he
 22 inspected after he was baited into that, into that
 23 question, okay, that he said that he inspected it.

24 Now, I look at that and I take
 25 consideration of that, of numerous, hundreds of

1 his statements, and I'll read halfway through:

2 "QUESTION: Sure. I'm just trying to get
 3 the process. I've seen it. I've heard -- I've
 4 heard you describe it. I just want to make sure I
 5 get -- I get it.

6 "Once you hear that sound, that last kind
 7 of pssah" -- he spelled it p-s-s-a-h -- "of air,
 8 that sound that told me --

9 "Uh-huh," answer.

10 Then question: "That tells you that the
 11 legs have come down; correct?

12 A "ANSWER: No. That tells me that the legs
 13 were already locked."

14 So he's saying that he's going by an
 15 audible, and that goes right consistent with page 13
 16 of my report. It's very consistent with page 13,
 17 so --

18 Q You'll agree with me that your
 19 Affidavit doesn't include a quotation from page 77?

20 A Again, I look at -- I look at depositions
 21 and when you have people who may have a horse in the
 22 race, I have to take into account what may be or may
 23 not be consistent with the facts. And when I look
 24 at that, page 77, that was not consistent with prior
 25 testimony nor his statement on -- near the day of

1 commercial motor vehicle drivers in the past -- and
 2 I hate to repeat myself -- that have testified in
 3 deposition that they inspected their commercial
 4 motor vehicle before they rear-ended the back of
 5 another vehicle. And when I go out there and
 6 inspect the vehicle, the brakes are severely
 7 deficient as to what's required under the Federal
 8 Motor Carrier Safety Regulations, Part 393. So I
 9 look at that and say that his testimony is
 10 inconsistent with the facts.

11 Q Or is it that your opinion is
 12 inconsistent with the evidence in this case?

13 A Absolutely not. Absolutely not.

14 Q You have to -- you agree it's one
 15 or the other; right?

16 A It's -- I'm telling you right now it's --
 17 it's the way -- what I'm telling you is what
 18 happened.

19 Q Either your opinion is inconsistent
 20 with the evidence or his testimony is inconsistent
 21 with your opinion. It can't be both.

22 A I would say to you yes, but you're
 23 incorrect in assuming or even stating that my
 24 opinion is incorrect. The facts line up on my side
 25 very much so.

1 Q In your opinion?

2 A Well, in my opinion, yes. And if you --
3 you know, there's -- and again, it's based on the
4 evidence that's in front of me and the inspection.

5 Q How much have you been paid so far
6 for your opinion?

7 A I don't know. I don't keep track of that.

8 Q Well, you keep track of invoicing;
9 right?

10 A I don't do the invoicing. That's done --
11 that's done in my office. My assistant --

12 Q Well, it's your business.

13 A My assistant does all --

14 Q Your business --

15 A Yeah. My assistant does all the invoicing.
16 I don't -- I don't even see the invoices.

17 Q You enter the time; correct?

18 A I'm sorry?

19 Q You enter the time. You calculate
20 the time associated with how long it takes you to do
21 certain things?

22 A I put a -- every day I work, I fill out
23 timesheets and I put them in a bin right next to my
24 desk and that bin is cleaned out every --
25 periodically, I would say, and my assistant bills

1 was -- that's part of the electronic file that I
2 don't have. I just have the work product in front
3 of me, discovery.

4 Q It looks like you charged a
5 retainer fee of \$5,000. Does that sound about
6 accurate?

7 A Yes, sir.

8 Q Is it typical for you to work
9 multiple days on your expert report?

10 A Yeah. I -- as I stated earlier, I have
11 about 50 cases currently going on, and that's --
12 that's pretty consistent for me. So, you know,
13 between phone calls and such, you know, I may put an
14 hour in here, two hours there, you know, four hours.
15 It varies.

16 Q For example, I'm looking at your
17 May 11 -- I know you don't have it in front of you,
18 which is why I'm just going to read it into the
19 record and see if I can understand what you're
20 talking about.

21 A Sure.

22 Q On your May 11, 2015, invoice, it's
23 Invoice 15-421, there's an entry from 2:50 p.m. to
24 4:05 p.m. on April 28, 2015, which is a review,
25 begin foundation of report, which sounds to me like

1 out. I don't see them from that point on. I don't
2 see them, nor do I see the invoicing.

3 I do see, however, a total gross billing
4 that comes in on -- that we -- that we do both from
5 a consulting practice of training truck drivers and
6 to providing expert -- expert testimony.

7 Q What's the total number of hours
8 you've billed on this case so far?

9 A Again, I -- once again, I have no idea. If
10 you told me it was 30, if you told me it was 40 or
11 50, I wouldn't be able to tell you which was
12 accurate. I just don't know.

13 Q What's your cost for deposition
14 here today?

15 A \$400 an hour, plus travel.

16 Q Do you have a minimum payment?

17 A Uhm, I believe there's -- we just changed
18 the -- not too long ago we changed our retainer
19 agreement. I believe that there's a four-hour
20 minimum or something like that. There is a copy of
21 the retainer agreement on that jump drive as well.

22 Q Do you have a copy of your
23 invoicing?

24 A I don't have that with me, sir. It's on
25 the jump drive, and you have that. That

1 you're probably preparing to do your report; does
2 that sound fair?

3 A Yeah, base -- now, basically, foundation of
4 the report is the -- if you look on the report, you
5 can see the front page and it's got -- it's got
6 things in there such as the DOT numbers and things.
7 It's not getting into opinions and the substance of
8 the report. It's more or less what I refer to as
9 foundation.

10 Q And then the next entry is
11 April 30, 2015, and there's two entries that just
12 say "report."

13 A Yes, sir.

14 Q One from 8:30 to noon and then
15 another one from 4:05 to 4:40. And I guess that's
16 what I'm getting at, it takes you -- something might
17 pull you away from writing your report as you're
18 working throughout the day?

19 A Well, sometimes --

20 Q So there are multiple entries for
21 report, is that indicative of the fact of when you
22 were preparing it?

23 A Yes. And what happens is that I may have a
24 conference call at -- you know, if the billing is
25 from, say, 2 to 4, I may have a conference call with

1 another matter at 4:30, so I have a half-hour prep
 2 time for that conference call. So I stop the clock
 3 at 4 o'clock on that particular job, you know, so it
 4 really varies.

5 Sometimes I may spend literally 20 minutes
 6 on a report and I log it because all of a sudden,
 7 you know, I'm down at the dinner table and something
 8 pops into my head about a case and I have to get
 9 it -- I've got to get it down on paper. My wife
 10 loves me for that, too.

11 Q Have you ever worked with
 12 Mr. Concannon or his firm before this --

13 A No, sir.

14 Q -- case?

15 A No, sir.

16 Q You said you worked with some
 17 attorneys, you believe, in the past in Michigan. Do
 18 you know the names of any of those attorneys?

19 A No. If I don't remember the case, I
 20 wouldn't remember the attorneys' names.

21 Q Do you know whether or not they
 22 were plaintiff's cases or defense cases?

23 A You got a 50/50 shot on that one.

24 Q I understand that.

25 A I just don't --

1 Q I'm just wondering if you remember.
 2 A No, I don't recall.

3 Q In your opinion, are there any
 4 design alternatives that Hendrickson could have used
 5 to indicate to a driver that the axles are -- or I'm
 6 sorry -- the arms are over the axle where they're
 7 supposed to be?

8 A No. I'm not a design individual, so I
 9 really would not opine on that.

10 Q Same question for manufacturing.
 11 You wouldn't have any opinions as to the
 12 manufacturer of this particular Hendrickson system;
 13 is that correct?

14 A No, sir.

15 Q Do you believe it would be helpful
 16 for a driver if there was a light on the control box
 17 that would indicate red or green indicating the legs
 18 are where they're supposed to be on the axle?

19 MR. CONCANNON: Object to the form
 20 as to the relevance and ultimately defensibility on
 21 this issue.

22 You can answer, Scott.

23 A I do believe that it would be helpful, but
 24 there's -- in this particular case here, if a driver
 25 is still, you know, listening for a sound, going by

1 an audible and not physically inspecting, the result
 2 may be the same. So I really -- I don't have an
 3 opinion outside of that.

4 Q Going back to opinions 1 through 6
 5 for a second, would you agree with me that your
 6 opinions can be summarized as the system failed and
 7 Mr. Urjiles failed to discover it?

8 A That -- that would be correct, that he
 9 would be -- that he had failed to do -- to inspect
 10 it.

11 Q Well, he had failed to find that,
 12 in your opinion, the angle irons were not situated
 13 properly?

14 A That the wear pads -- the angle iron wear
 15 pads were not -- were not properly seated. That's
 16 correct.

17 Q As you sit here today, do you know
 18 at what angle those arms would have been at?

19 A They drop down to an approximate 90 degree
 20 off the roadway.

21 Q That I understand, but I'm asking
 22 about on April 26th, 2012, do you know what angle
 23 they would have been at?

24 A No, I don't. I mean, it would have been --
 25 it would have been less than a 90-degree angle being

1 that it's not seated properly. It would have
 2 been -- and again, this is pure speculation. It
 3 would have been more like maybe an 85 or something
 4 like that. I just don't have a solid answer for
 5 you.

6 Q Do you believe Mr. Goodman could
 7 have performed an inspection to make sure that the
 8 legs were seated properly over the axle?

9 A There's nothing in the Federal Motor
 10 Carrier Safety Regulations that requires a dock
 11 worker or forklift operator to inspect a commercial
 12 motor vehicle. That's the responsibility of a
 13 commercial motor vehicle operator.

14 Q Is there anything within the
 15 Federal Motor Carrier Safety Regulations that
 16 prevent a load or a dock worker to do that?

17 A No, nothing that would prevent it, but he
 18 would have to know what he's looking at. And in
 19 this particular-type trailer -- these are not very
 20 common-type trailers, by the way, so it's highly --
 21 highly probable that he wouldn't even have a clue
 22 that those kickstand legs that that -- that MaxiLok
 23 system existed underneath there.

24 Q Is it your opinion that lowboy
 25 trailers are not common, are commonly used within

1 the automotive industry?

2 A They are, but they're rare. They are used,
3 but they are rare-type trailers. They're not very
4 common, comparatively speaking to a standard flat
5 deck-type semitrailer, van trailer.

6 Q Do you know how common lowboy
7 trailers were used at the TRW facility on
8 the -- this particular loading dock that Mr. Goodman
9 would have unloaded during the course of his career?

10 A Well, I know that this trailer in
11 particular, they had a -- they had some angst about
12 it coming in because of problems. So -- but I know
13 that he had been there sometimes in the past, I just
14 don't recall the exact number.

15 Q Did you ever investigate an
16 incident involving Mr. Goodman where a trailer
17 collapsed prior to this one to determine whether or
18 not he was actually a cause of the trailer dropping?

19 A No, sir.

20 Q You read his deposition testimony
21 where he was involved in a prior incident?

22 A Yes, I don't -- I don't recall specifics on
23 it, though.

24 Q You actually weren't provided the
25 TRW employment records; were you?

1 A No, sir.

2 Q All right. So you wouldn't have
3 any information related to that prior incident; is
4 that correct?

5 A That's correct.

6 Q Is it possible that information
7 could have been informative to you in rendering your
8 opinions?

9 A If it were the same exact type trailer,
10 I -- based on -- based on what had occurred on this
11 particular trailer, I don't think so. If it had
12 happened in this particular -- or this same trailer,
13 for that matter, then I would say there's a real
14 problem with this MaxiLok system. So that would go
15 back to your question several questions ago that
16 there is a systemic problem.

17 But if it's a regular, flat-deck type,
18 common standard, if you will, semitrailer, 53-footer
19 that came in and there was a collapse, it could --
20 it could have been a PosiLok system. And again,
21 that would -- that would likewise be driver error.

22 If it was a MaxiLok system, that would be
23 very probable driver error. If it were -- I don't
24 know what type of case this was. If he drove off
25 the back of the trailer and there was a collapse,

1 which is considered sometimes a collapse, if that
2 had occurred, that would have been possibly chocking
3 error or possibly driver error.

4 I can't -- without having more information
5 on that, I can't really answer the question
6 effectively.

7 Q It's possible, though, that if you
8 had additional information, it could indicate to you
9 whether there was additional involvement outside
10 what we've already discussed by Mr. Goodman?

11 A It would have to really be -- it would have
12 to be -- you would have to tell me in detail what
13 had occurred here, and then I would be able to
14 answer you effectively for the purposes of this
15 deposition.

16 Q Had you ever spoken with
17 Mr. Goodman?

18 A Have I ever -- no, sir.

19 Q Okay. Have you ever requested
20 information related to that separate incident to
21 answer some of the questions that you have that you
22 just told me about?

23 A No, sir, I didn't.

24 Q Okay.

25 MR. CONN: We have to go off the

1 record for a second. Our call -- videoconference is
2 about to end in 10 minutes. I have to expand the
3 time because I have more than 10 minutes of
4 questions and I assume Andy has some, too. So give
5 me one second so I can get that extended.

6 THE WITNESS: Sure.

7 (Whereupon a short recess was
8 held.)

9 BY MR. CONN:

10 Q Based upon your training, are you
11 qualified to render opinions related to hours of
12 service?

13 A Yes, sir, absolutely.

14 Q Have you rendered any opinions as
15 to hours of service in this case?

16 A I don't recall seeing anything that would
17 have been problematic. Now, we're, of course,
18 talking about hours of service with respect to
19 Federal Motor Carrier Safety Regulations.

20 Q That is correct, yes.

21 A I did not see anything that would have set
22 up a red flag.

23 Q I want to talk to you now about
24 Dr. Sprague's report. We talked about it a little
25 bit. I want to talk about it in a little more

1 detail now.

2 I understand, based upon what we've talked
3 about here today, you have criticisms of that
4 report; is that fair?

5 A Yes, sir.

6 Q Tell me what those criticisms are.

7 A Well, essentially everything that he had --
8 the controversy that he brought up with respect to
9 my report, but the -- the main thing that I would
10 point to on his report -- bear with me one second
11 here, if you would.

12 If you look at page 11 -- excuse me --
13 page 8 of 11 --

14 Q That's of Dr. Sprague's report?

15 A It is. ESI.

16 Q Page 8. Yeah, that's Dr. Sprague.
17 You said page 8 of 11?

18 A Yes, sir.

19 Q Okay. I'm there.

20 A It says, "In accordance with the MaxiLok
21 documentation reproduced, Figure 7, for the airbag
22 system to be caused to exhaust prior to suspension
23 supports, achieving their intended support position,
24 the control valve and/or its associated linkage must
25 be broken, damaged, or otherwise significantly out

1 of adjustment," and he goes on to speak further.

2 What I take issue with is that he says
3 "significantly out of adjustment." When I was
4 there, there were no tests that were performed that
5 would have determined whether this was significantly
6 out of adjustment or not. In addition, we're
7 talking about two years later.

8 And then if you look at the report -- not
9 the report, but the -- yeah, I guess it would be the
10 report -- from the trailer repair facility, they
11 said nothing about adjusting to make sure that it
12 was not -- that it was significantly adjusted or not
13 adjusted or improperly adjusted, I should say. So
14 you take that --

15 Q So you're saying that -- go ahead.

16 A Take that into effect when you're -- when
17 you're looking at that, I get again -- I get -- I go
18 back again to when the mechanic says that there was
19 no problems with the trailer.

20 Well, as I stated earlier, is that how many
21 times have you seen where somebody is taking their
22 pickup truck to a mechanic and the problem that they
23 were talking about, that they were hearing or what
24 have you, doesn't exist when they get there. I've
25 had it happen to me and probably every juror has had

1 it happen to them as well. So that's what I'm
2 referring to regarding significantly out of
3 adjustment if I'm -- if you're following my logic
4 here.

5 Q I don't know that I am to be
6 completely honest with you.

7 I understand that you're taking issue with
8 the fact that he refers to the fact that in order
9 for this to have occurred, it needed to be broken,
10 damaged or significantly out of adjustment. I
11 understand that.

12 But I think what you're saying, and correct
13 me if I'm wrong, you didn't find any evidence based
14 upon your inspection that this particular trailer
15 was significantly out of adjustment; is that true?

16 A No, no. That's not what I'm saying. Let
17 me clarify.

18 Q Okay.

19 A What I'm saying, both myself and ESI agree
20 that there was no damage. There was no damage that
21 caused what my conclusion is as to what caused this
22 truck -- so far as I can understand, they do not
23 list anything as to being damaged. I say that there
24 was nothing damaged there either. I do say there is
25 a lubrication issue and I say that there was a

1 seating -- a proper seating issue with the
2 kickstands, kickstand legs.

3 Now, take that into account that there's
4 nothing broken or damaged, it's acknowledged by ESI
5 that the trailer MaxiLift system can be -- can be
6 significantly out of adjustment. Well, that would
7 likewise mean that it could be moderately out of
8 adjustment. So they not performing an inspection as
9 to the adjustment being in or out and the mechanic
10 not doing an adjust -- an adjustment inspection as
11 well, that really can't be testified to. So that
12 very well could have been the problem where the
13 kickstand legs were not, in effect, sitting properly
14 on the axle as they were intended to be.

15 So I guess my point is, is that the
16 causative issue may have been that it was
17 significantly out of adjustment or somewhat out of
18 adjustment where it caused the kickstand legs to not
19 fully seat. Mr. Urjiles --

20 Q Urjiles.

21 A I'll get it right by the end of the
22 deposition.

23 -- heard that the audible of the airbag
24 deflating and took that as fact that the kickstand
25 legs were in effect sitting on the axle.

1 Q Do you have any other criticisms
2 other than that issue with Dr. Sprague's report?

3 A Well, he criticizes -- on page 10, the
4 first full paragraph all the way down at the end, he
5 says, "In the absence of any specific testing
6 supporting the unusual hypothesis identifying
7 lubrication as a root cause for this incident is
8 speculative at best."

9 I'm agreeing that that is speculative.
10 However, take his same statement and apply that to
11 "significantly out of adjustment." They never
12 checked that at the time of the inspection. I was
13 there; I watched them. They never -- they never
14 checked --

15 Q "They" meaning?

16 A "They" meaning ESI.

17 Q "They" meaning?

18 A Meaning ESI.

19 Q Okay.

20 A ESI never checked this for being out of
21 adjustment significantly or otherwise, because I was
22 there and I watched what they were doing. So taking
23 those two statements together where he's going to
24 criticize me in saying that my hypothesis, unusual
25 hypothesis -- and again, I agree with it, that it is

1 But he appears to me to be coming across as an
2 advocate to try and go after my report and not
3 provide any opinions as to what did happen; okay?

4 If you're going to come after my report and
5 sit here and try to criticize me, that's fine, I can
6 handle that, but at least come up and try to give me
7 your opinion as to how you think it happened. There
8 is none. That's why nothing is there.

9 Q Can you tell me whose report more
10 closely is based upon the testimony of the witnesses
11 in this case?

12 A I believe that mine is by far. I mean, I
13 put quotes in here from -- from depositions in my
14 report.

15 Q Despite the fact that you've
16 already admitted that you're ignoring the deposition
17 testimony of Miguel Urjiles?

18 A At the risk of redundancy, and I'll say
19 this again, is that looking at a commercial motor
20 vehicle driver that has a horse in the race, you
21 know, I look at it and say that a pretrip inspection
22 or any type of inspection conducted by a commercial
23 motor vehicle driver that I find at a later point,
24 two or three hours after the crash, that it was
25 causative, what he said and he checked off on his

1 a -- it is somewhat speculative, however, a
2 well-thought out speculation, if you will. It's a
3 well-thought out point that friction could very well
4 have been the issue that caused these kickstand legs
5 to hang up.

6 Q But again, you agree that it's
7 speculative, although well-thought out?

8 A Absolutely. I wasn't there, so it has to
9 be some degree of speculation.

10 Q So we talked about then two
11 criticisms, then, including the -- the one on
12 page 10. Any other criticisms of Dr. Sprague's
13 report other than those two?

14 A Well, the general analysis of my report.
15 How he came after my report with -- and he
16 essentially has no basis for his findings. He just
17 criticizes me, which is -- which is fine. I -- but
18 he's incorrect.

19 Q So you have a problem with
20 "significantly out of adjustment." You have a
21 problem with the speculative nature, and that
22 involves in some respects the out of adjustment, and
23 then you believe just frankly he's wrong?

24 A Yes. Absolutely. I mean, he -- I believe
25 that he really knows what's -- what happened here.

1 inspection report that it was fine, not one day, two
2 days, but five, six days in a row if not more, it
3 caused me -- has caused me over the years to use
4 precaution in analyzing the deposition of a
5 defendant or plaintiff, whichever the case may be.

6 But in particular, in examining closely a
7 commercial motor vehicle driver's deposition as to
8 whether he is being -- I'm not going to use the word
9 "truthful," but if he's testifying in line with the
10 facts that I have determined and have seen in the
11 case.

12 Q Any other criticisms with
13 Mr. Sprague's -- or Dr. Sprague's report?

14 A No. Again, it would just be essentially
15 page 9 -- 9 and 10 where he -- where he goes after
16 my report with no foundation -- with no -- no basis.
17 And page 11, for that matter.

18 Q You don't have your case list in
19 front of you; do you?

20 A No, sir, I don't.

21 Q Looking at the firms that you've
22 worked with, you recall providing a list of those?

23 A Yes. That would be on -- on the
24 spreadsheet.

25 Q The Sam Bernstein law firm, is that

1 a firm that you've worked with in Michigan?

2 A That sounds familiar, yes.

3 Q Do you know the attorney or
4 attorneys you worked with at the Sam Bernstein law
5 firm?

6 A Their names should be on there. Should be
7 right after the date.

8 Q I think I understand what you're
9 saying, but I -- I don't have it in spreadsheet
10 format.

11 A Yeah. No, you're going to get it in pieces
12 there unfortunately because it is a spreadsheet.

13 Q I sure did.

14 A You're going to have to kind of tape them
15 together somehow, I guess. But that was a -- that
16 was a crash.

17 Q Trucking accident, you would have
18 worked for plaintiff's counsel?

19 A Yes, sir. If I remember correctly, it was
20 a tanker crash. I'm not 100 percent certain,
21 though.

22 Q Do you know if you've ever done
23 work for my firm, Segal, McCambridge, Singer &
24 Mahoney?

25 A Actually, you all have an office down in

1 THE WITNESS: Worked for plaintiff
2 or defense.

3 MR. CONCANNON: All right. Thank
4 you. Okay.

5 MR. CONN: Yeah, yeah. Let's go
6 off the record for a second.

7 (Whereupon there is a discussion
8 held off the record.)

9 BY MR. CONN:

10 Q I want to correct something that we
11 talked about earlier. We talked about your retainer
12 agreement and how much your fee is. I think we said
13 it was \$5,000. The engagement letter that you have
14 seemingly indicates that it's \$4200.

15 A Okay. Then that would have been -- right.
16 We had changed that sometime. I don't recall what
17 the date was that we changed the retainer agreement.
18 We went from -- there was a couple changes, one of
19 which was we went from 4200 to 5,000. And then
20 there was another change that went from -- for
21 deposition testimony, from \$400 to \$450 an hour, so
22 you're getting a bargain. And I think those were
23 the two only changes.

24 Q Okay.

25 A So that would have been on the old version,

1 Philadelphia; correct?

2 Q We do.

3 A Yeah, I think I've worked for you -- I
4 think I've worked for you folks down in
5 Philadelphia.

6 Q Do you know who in particular?

7 A No, I don't. I just recall the firm's
8 name. I've either worked for you or against you. I
9 just don't remember.

10 Q And that's fair because I saw the
11 name of the firm on here, but I don't know if you
12 have firm for and firm against.

13 A No, I don't.

14 Q Do you know the --

15 A Right, right. Well, that -- that would be
16 working for.

17 Q Okay. Does the spreadsheet
18 indicate whether you were retained by plaintiff or
19 defense?

20 A No, it does not, I don't believe. Your
21 version would not.

22 MR. CONCANNON: Eric, the question
23 cut out. You said "Does the spreadsheet indicate
24 that you were" -- and then it went blank. Can you
25 repeat it for me?

1 in other words.

2 MR. CONN: Let's go off the record
3 again for a second.

4 (Whereupon there is a discussion
5 held off the record.)

6 BY MR. CONN:

7 Q Sir, do you charge for trial
8 testimony?

9 A I do.

10 Q What is your charge for trial
11 testimony?

12 A Well, again, it goes to the old -- the old
13 rate, to the new one. There were some structural
14 changes on that as well. It used to be \$400 an hour
15 and now it's 2500 a day plus travel and standby
16 time. So in this particular matter here, it would
17 be \$400 an hour plus travel.

18 Q You'll stand by the old agreement?

19 A Yes, sir. Yes, sir.

20 MR. CONN: Sir, I don't have any
21 other questions. Thanks for your time.

22 THE WITNESS: Thank you.

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1 CROSS-EXAMINATION BY MR. CONCANNON:

2
3 Q Scott, I do have a few. I'll just
4 try to cover a couple items, but working backwards
5 towards the end, you talked about Mr. Conn's firm of
6 Segal, McCambridge, Singer & Mahoney. Your file
7 spreadsheet reflects a David Yavil, who I can tell
8 you, I think, is with the Philadelphia office of
9 that firm. Does that name David Yavil ring a bell
10 for you?

11 A Yes, it does. I actually --

12 Q That was the case of Matie
13 (phonetic) versus Transtar Intermodal. Was that a
14 trucking case?

15 A Yes. Everything I do is trucking cases.
16 There were two cases with him.

17 Q All right. Oh, you had two with
18 Mr. Yavil?

19 A Yavil, yes.

20 Q Yavil. And Mr. Yavil's firm sought
21 you out as an expert in trucking?

22 A Yes, sir.

23 Q And trucking safety?

24 A Yes, sir.

25 Q And in those cases, were you

what happened?

2 A No, just criticisms of my report.

3 Q Okay. When you talk about what
4 happened in your view, do you -- is it your view
5 that this -- what Mr. Conn described as the incident
6 of the falling of the trailer, can that happen
7 without negligence?

8 A One more time on that. I'm sorry, Andrew.

9 Q In this case, did the trailer fall
10 as a consequence, in your view, of negligence?

11 A Yes.

12 Q And with --

13 MR. CONN: Object to the form of
14 the question. Calls for speculation.

15 Q -- the issue of controlling --

16 BY MR. CONCANNON:

17 Q And with this issue of
18 controlling --

19 MR. CONN: Whoa, whoa, whoa, whoa.

20 THE WITNESS: There was an
21 objection.

22 MR. CONN: Did you get my
23 objection?

24 THE COURT REPORTER: I did.

25 MR. CONCANNON: I didn't hear it.

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1 qualified as an expert?

2 A We never went --

3 MR. CONN: Form. Foundation.

4 A We never went to trial on them. So, I
5 mean, qualified from the law firm's extent, yes, but
6 not from the court.

7 BY MR. CONCANNON:

8 Q I will ask it a different way.
9 That was a good point. You've been -- strike that.

10 Have you testified in trial?

11 A Yes.

12 Q Have you testified in the federal
13 system?

14 A I believe so, yes.

15 Q Okay. And in -- it's semantics,
16 but have you testified as a qualified trucking
17 expert by a United States federal judge?

18 A I believe by a United States federal judge,
19 yes, but I -- you know, state courts, yes, but I
20 believe federal as well.

21 Q Okay. You were asked about your
22 comparisons, if you will, of the report that you had
23 with Mr. -- or I'm sorry, Dr. Sprague, and you
24 talked about the issue of lubrication. I want to
25 ask you: Does he provide any explanation himself of

I didn't hear it all. What was it?

2 MR. CONN: Calls for speculation.

3 BY MR. CONCANNON:

4 Q Okay. Scott, with respect to the
5 issue of control of the trailer, you recall being
6 asked control of the trailer, a few questions by
7 Mr. Conn; is that right?

8 A Yes.

9 Q All right. I'll ask you about
10 control of the actuator or the device that elevates
11 the system. Did anybody, other than Mr. Urjiles,
12 exercise control over that device?

13 A So far as I know, no, sir.

14 MR. CONN: Foundation.

15 BY MR. CONCANNON:

16 Q And am I correct --

17 MR. CONN: Did you hear that?

18 THE WITNESS: He just said
19 "foundation."

20 MR. CONCANNON: Thanks, Eric.

21 BY MR. CONCANNON:

22 Q Is it your view that the
23 elevation -- I'm sorry -- the elevation of the
24 system was the act of negligence here or at least
25 one of the acts of negligence here?

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1 A The elevation of the system?

2 Q Or elevation of the system by
3 utilizing the lever or the switch to elevate it?

4 MR. CONN: Form of the question.

5 A Maybe you could repeat that question a
6 different way. It's a little --

7 BY MR. CONCANNON:

8 Q There are -- there are two -- let's
9 put it this way.10 You ascribed negligence in the manner in
11 which this system was raised or elevated and that
12 there wasn't an inspection with respect to the
13 seating of the legs; is that correct?

14 A Yes, sir.

15 Q All right. Does that -- do those
16 two things have anything to do with Paul Goodman?

17 A With what?

18 Q Do those two things have anything
19 to do with the activity of Paul Goodman?

20 A Oh, with Paul Goodman, no.

21 MR. CONN: Asked and answered.

22 BY MR. CONCANNON:

23 Q Now, you were asked some time ago a
24 question that you tried to explain, and we moved on.
25 There was a question about the Hendrickson

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1 Q So even -- even Hendrickson's own
2 drawing acknowledges that the system can work for a
3 time, even if the system's been improperly raised?
4 A That's correct. And that's why they have
5 it on the label right next to the control valve
6 about making sure that it's properly inspected and
7 not just going by a verbal.8 Q Okay. You were asked a little bit
9 about --

10 A Or audible, I should say. Sorry.

11 Q -- whether or not you trusted
12 Mr. Urjiles' testimony and his credibility. I don't
13 want to ask you about that, but I do want to ask you
14 about when you quoted in your Affidavit. To the
15 extent that he inspected visually the legs, was he
16 inspecting it from the site of the knob based on
17 what he testified to?

18 A Let me just read --

19 MR. CONN: Foundation.

20 A Let me just read this one section real
21 quick here.

22 Go ahead. Repeat the question, please.

23 Q I'll rephrase it, Scott. I won't
24 go from your report. I'm going to go from his
25 testimony.

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1 instructions.

2 A Yes, sir.

3 Q Okay. Doesn't Mr. -- if you --
4 doctor -- I keep calling him Mr. -- if you look at
5 Dr. Sprague's report, he provides a graphic of
6 instructions or warnings on that system at page 8 of
7 his report; is that right?

8 A He does.

9 Q And it has two photographs -- I'm
10 sorry -- two illustrations within the warnings. One
11 is a, quote/unquote, correct position and one is of
12 incorrect position.

13 Did you see that in his report?

14 A Yes, sir.

15 Q All right. Am I correct that the
16 system can be elevated and those -- the legs dropped
17 in incorrect position, but the trailer will still
18 remain elevated for a time?19 A Yes. And that's exactly my point. If you
20 look at these illustrations here on -- on the ESI
21 report, there is a probability that those legs will
22 not sit all the way back, and that goes into the
23 significantly, quote, significantly out of
24 adjustment issue that I have -- that I addressed
25 earlier.1 His testimony in his deposition was that he
2 inspected the -- you understood he claimed to have
3 inspected the legs; correct? We're in agreement, he
4 testified that he did?

5 A That's correct.

6 Q Are we to understand your testimony
7 thus far that you're somewhat skeptical that he
8 either actually did or meaningfully inspected it?9 A I -- I think it's highly improbable that he
10 gave it any kind of inspection.11 Q Okay. Now, I'm going to read into
12 the record -- you don't have his deposition in front
13 of you given how this has worked out today, but I'm
14 going to ask you -- I'm going to read something into
15 the record and ask you a question; fair enough?

16 A That's fine.

17 Q All right. This is first his
18 answer: "Stay there by the knob. You can see from
19 there --".

20 MR. CONN: Whoa. Whoa.

21 THE WITNESS: Hold on a second.
22 Hold on a second.

23 MR. CONCANNON: Yup.

24 MR. CONN: Page and line.

25 MR. CONCANNON: Okay. Page 40 and

1 41, Eric.

2 BY MR. CONCANNON:

3 Q So he says, "I stayed there by the
4 knob. You can see from there the axle is right
5 there."

6 This is my first question, Mr. Turner.

7 Can you see the axle where these two legs
8 are supposed to be seated from -- standing from the
9 knob?

10 A You can, but it's --

11 MR. CONN: Object to the
12 foundation.

13 A You can, but it's not a real good visual.

14 BY MR. CONCANNON:

15 Q Let me ask you for foundational
16 purposes. You -- have you elevated this very system
17 before?

18 A Yes.

19 Q All right. And in your inspection,
20 did you stand at the knob location?

21 A Yes.

22 Q Okay. And from that location --

23 MR. CONN: I'm going to object to
24 the form. Hold on. I'm going to object to the form
25 of the question as to "knob location."

1 BY MR. CONCANNON:

2 Q Okay. Scott, did you understand
3 what I mean? There's only one knob that elevates
4 the system on the body of the trailer; is that
5 right?

6 A Yes, sir.

7 Q All right. And at the time of your
8 inspection, you still stood by that knob or actuator
9 device; correct?

10 A Yes.

11 Q And do you have personal knowledge
12 of seeing the location of the axle where these legs
13 would sit in relation to where that actuator is
14 located; yes or no?15 A You can see it, but it's -- it's not a real
16 good visual.

17 Q Okay. Fair enough.

18 Do you believe that an inspection -- strike
19 that.20 Do you believe that one can reasonably rely
21 on that visual inspection from that location as
22 sufficient evidence that the legs are properly
23 seated?

24 A No.

25 MR. CONN: Form.

1 BY MR. CONCANNON:

2 Q Are you required in your view to
3 form opinions here to have a degree in engineering?

4 A No, sir. Absolutely not.

5 MR. CONN: Foundation. Form and
6 legal conclusion.

7 BY MR. CONCANNON:

8 Q Have you been stricken as a witness
9 by any court for lacking a degree in engineering?

10 A No, sir.

11 Q Have you been stricken by any court
12 as --

13 MR. CONN: Form.

14 BY MR. CONCANNON:

15 Q -- an expert based upon
16 insufficient knowledge of pneumatic systems --

17 A No, sir.

18 Q -- and how they work?

19 A No, sir.

20 Q Other than being stricken on the
21 basis your testimony would be duplicative, have you
22 ever been stricken on any other basis?

23 A Not that I'm aware of, no.

24 MR. CONN: Same objection.

1 BY MR. CONCANNON:

2 Q You talked about -- you were asked
3 about lighting. You talked about earlier that this
4 was intermittent overcast at approximately 10 a.m.
5 when -- it was a nearby time for this accident; is
6 that correct?

7 A Yes, sir.

8 Q All right. Does the fact
9 that the -- let me back up.10 Have you seen pictures of the loading dock
11 where this incident took place?

12 A No, sir -- I saw pictures, yes.

13 Q Would the presence of a trailer
14 being backed down into a loading dock impact on
15 ambient light under the trailer?

16 A Sure.

17 MR. CONN: Foundation, and he
18 hasn't been present at the actual site.19 Q For now this is a yes or no, Mr.
20 Turner. Is it a yes or no?

21 A Yes.

22 Q Explain how.

23 MR. CONN: Hold on a second. I'm
24 objecting.

1 MR. CONCANNON: I understand that.
2 I heard it. You can --

3 MR. CONN: Can I put my objection
4 on the record?

5 MR. CONCANNON: I've heard it.
6 You said "foundation," right?

7 MR. CONN: I said objection to
8 foundation insofar as he hasn't been at the actual
9 scene. Now you can go.

10 MR. CONCANNON: Thank you.

11 MR. CONN: Yup.

12 BY MR. CONCANNON:

13 Q Scott, can you explain why you said
14 yes?

15 A Well, shadowing potential and things of
16 that nature. You could have -- behind a building,
17 it could actually be between trailers. I mean,
18 there's a lot of variables, you know, besides just
19 weather -- ambient weather conditions.

20 Q Okay. Is it any relevance really
21 to you that Mr. Goodman had any prior incident with
22 respect to being involved in a trailer causing an
23 injury?

24 A Not necessarily.

25 MR. CONN: Foundation. Asked and

1 answered.

2 A If it had -- if it were a collapse of a
3 trailer, I -- I don't know if it would really -- it
4 depends. If it was the same type trailer, then I
5 certainly would want to see it. But if it were a
6 different-type trailer where, you know, a forklift
7 fell off the dock or a PosiLok failed or something
8 like that, yeah, I would want to see it, but I don't
9 see it in this particular case.

10 Q Okay. When you did your
11 inspection, were you able to -- let me back up.

12 You tried to give an answer earlier, Scott,
13 that was cut off. Do you remember that?

14 A Yes.

15 Q Can you share with us what that
16 answer was that you were --

17 A I don't remember the context of the answer
18 or the content of it, but I --

19 Q It had to do with Hendrickson
20 instructions.

21 A Okay. Hold on one second. I don't -- I
22 don't remember. I know it was Hender -- with regard
23 to Hendrickson instructions, but I don't -- I think
24 that we ultimately wound up covering that.

25 Q Okay. That's really what I needed

1 to know.

2 A Yeah, at a later point we covered it.

3 MR. CONCANNON: Very good. Then I
4 don't have anything else. Thanks.

5
6 REDIRECT EXAMINATION BY MR. CONN:

7 Q Sir, Mr. Concannon asked you
8 questions about Mr. Urjiles' deposition testimony.
9 Did you ever go back into his deposition testimony
10 to see what he meant or he intended when he said, "I
11 lift the trailer up. When it is completed up, then
12 backed into the dock?"

13 A What he meant?

14 Q What he intended by that statement,
15 yes.

16 A Essentially how he -- how he prepared the
17 trailer and how he prepared the trailer for being
18 able to be offloaded and backed to the dock.

19 Q And my understanding is your
20 understanding of that is he performs an audible
21 inspection, but not a visual inspection; is that
22 true?

23 A Well, if you take that and you look at it
24 with respect to his deposition and contrast that to

1 his written statement the day, day after, day of,
2 whatever it was, he says -- he essentially says that
3 it was an audible that he relied upon, not a visual.
4 I mean, he doesn't specifically say it that way, but
5 I could read it for you what he does say if you
6 like.

7 Q I believe you have his deposition
8 transcript in front of you; is that correct?

9 A I -- unfortunately I don't, and I don't
10 know why his deposition is not here, but I don't
11 have it with me. It was sent -- it was sent to you
12 electronically.

13 Q And I have a copy because I was
14 actually at his deposition. So Mr. Concannon
15 started to read you a portion of Mr. Urjiles'
16 deposition testimony, but he neglected to state for
17 the record he didn't finish reading the answer and I
18 think it might be appropriate on this issue.

19 He said: "I stay there by the knob. You
20 can see from there, the axle is right there. I just
21 stay right there and just stay right there. That's
22 my job to do is stay right there until the trailer
23 goes up. And then when the trailer goes up, like I
24 said, there is a sound on the trailer. First of
25 all, you know, like the leg -- legs goes down. You

1 can hear a click in there. And then when the leg
 2 starts straightening out, they get on top of the
 3 axles. And then when they -- when those legs are on
 4 top of the axles, there is an air sound that goes
 5 "chhh" -- that's spelled by the way for the court
 6 reporter c-h-h-h -- "and that shows me there is
 7 complete. I just look at the legs on there, and
 8 then after that I go back to the cab and back to the
 9 dock and then, you know, shut off the truck and
 10 apply the brakes."

11 A What page --

12 Q Does that assist you at all?

13 A What page testimony is that?

14 Q Page 41. It's the complete portion
 15 of Mr. Urjiles' deposition testimony that
 16 Mr. Concannon didn't read for you.

17 A Right. But he --

18 Q My question for you is --

19 A Go ahead.

20 Q Does that help determine what
 21 Mr. Urjiles means by "complete"?

22 A It sounds more to me like he's using this
 23 as a general -- a general experience rather than
 24 what he did on that specific day. Now, that -- that
 25 is completely different than when he says what he

1 did on these other -- on these other -- both the
 2 statement. The statement clearly says what it says.
 3 I mean, it -- there's no -- there's no controversy
 4 there; all right? So I'm basing this on his
 5 statement.

6 What you're -- what you're reciting is his
 7 general duty of what he says that he does on a daily
 8 basis, the way I interpret it. On a regular basis,
 9 this is what he's supposed to do.

10 Q Do you have the deposition
 11 testimony in front of you?

12 A Like I said, I don't. I'm basing that what
 13 you just said to me and so far as I recall.

14 Q So Mr. Concannon was actually
 15 talking to him about this particular day, April 26.
 16 That would undermine what you just said; is that
 17 correct?

18 A No, sir. Like I said, I am going to his
 19 statement --

20 Q You're not being an advocate in
 21 this regard; are you?

22 A Absolutely not. And you know what? Quite
 23 honestly, you know --

24 Q Okay. Nothing further.

25 A -- I'm kind of offended on that. But I

1 could tell you right now that when his memory is
 2 most fresh, recollection, look at his statement.
 3 His statement does not say that he inspected. That
 4 was the important -- that was the important part.
 5 Then we go look forward -- jump forward to page 44
 6 of his -- excuse me -- 28, page 28 of his testimony
 7 where says it was an audible -- I'm just
 8 paraphrasing -- an audible that told him that the
 9 legs were down. Now, that's specific to this
 10 incident.

11 Q Excuse me, sir. There's no
 12 question.

13 A What you're referring to is -- what you're
 14 referring to is general instructions.

15 Q You're assuming that. You don't
 16 have his deposition testimony in front of you, and
 17 the question was actually referring to what happened
 18 on April 26th.

19 That being said, the statement itself
 20 doesn't say he didn't do an inspection; does it?

21 A If he did --

22 Q Just answer as to whether or not he
 23 did.

24 A So if he did --

25 Q He's silent on that issue.

1 A If he did an inspection --

2 Q It's silent as to that issue; isn't
 3 it?

4 A If he did an inspection --

5 Q Yes or no?

6 A No, it's not a yes or no answer. If he did
 7 an inspection --

8 Q Yes or no --

9 A -- the angle iron wear pads would have been
 10 on the axle.

11 Q Yes or no, does his statement say
 12 one way or the other if he performed an inspection?

13 A Again, I'm -- I'm basing it on what I have
 14 here in front of me and what you just said. He's
 15 given a general synopsis on how it would be done.

16 Q Look at the statement and tell me,
 17 is there a statement in there or is the word
 18 "inspection" in there, one way or another?

19 A Can you repeat that back to me what you
 20 just read?

21 Q Sure. Is the word "inspection" in
 22 the statement at all?

23 A Read that back to me what you just referred
 24 to and I can tell you.

25 Q The statement that you refer to in

1 your report.

2 A Oh. Oh, okay. I'm sorry. Hold on one
3 second. I got to locate it. Where did that go?

4 Q Page 13.

5 A Yeah, I got it right here.

6 "In a signed statement by the driver
7 Urjiles on April 26th, 2012, he states the following
8 as to the protocol which he applied" -- "the
9 protocol that he applied in raising of the
10 semitrailer's MaxiLok system."

11 "I lifted," all right. He's not saying I
12 would lift. Words have meaning, I would lift; in
13 other words, this is my general instructions. He's
14 saying "I lifted trailer up." So that to me in my
15 mind is specific to that day because he is making a
16 statement about something that just occurred.

17 So he says, "I lift the trailer up. When
18 it is completed up, then I backed onto the dock." That's specific to that day, no question about that.

19 Q Do you -- do you remember what my
20 question was?

21 A Yes. And I think I just answered it.

22 Q What was my question?

23 A I believe I just answered it.

24 Q You didn't. My question was: Is

1 A But didn't you ask me to consider all of
2 the evidence in this case? So now you want me to
3 cherry pick?

4 Q Now for this question I'm not.

5 MR. CONCANNON: Answer the question
6 as he phrased it, please.

7 BY MR. CONN:

8 Q I'm asking you specifically does it
9 state "audible"?

10 A In this particular one here, no.

11 MR. CONN: Thank you. Nothing
12 further.

13 RECROSS-EXAMINATION BY MR. CONCANNON:

14 Q I do want to follow-up now again
15 for purposes -- you don't have the deposition in
16 front of you?

17 A No.

18 Q I'm going to read probably an
19 innocuous question, but it needs to be set up.

20 So the question: "Miguel, I want to get a
21 timeframe here, and it may or may not prove to be
22 vital, but I don't know. Once you're in the cab" --

23 MR. CONN: Objection. What page?

1 the word "inspect" in that statement?

2 A No, it's not, and that's part of the
3 problem.

4 Q Thank you. Exactly.

5 So you don't know what it actually means
6 when he says it's completed; right?

7 A "When it's completed up. When it's
8 completed up." He goes by an audible which tells
9 him that the legs are -- excuse me -- the kickstand
10 legs are backed down.

11 Q Where does he say in that statement
12 he goes by an audible? Where does it say in that
13 statement he goes by audible?

14 A If you go back -- go back to his
15 deposition. Again, page 28 --

16 Q No, sir. He --

17 A Now I'm following --

18 Q I asked specifically about the
19 statement. Does the statement say "audible"?

20 A But I am following up with all the
21 evidence. You want me to consider all the evidence;
22 correct?

23 Q The question on the table is -- the
24 question on the table is does the statement say
25 "audible"?

1 What line?

2 BY MR. CONCANNON: 48, lines 19,
3 and it's going to go through page 49, line 13.

4 BY MR. CONCANNON:

5 Q I said, "It might prove to be
6 vital, but I don't know. Once you were in the cab,
7 can you tell me was it five minutes before Paul
8 started his delivery -- strike that.

9 "When you got in the cab, did you get on
10 the phone with your wife basically right away or
11 once you parked it?

12 "ANSWER: I don't remember, sir, to tell
13 you the truth.

14 "QUESTION: Okay. That's fine.

15 "ANSWER: I don't remember. It's been four
16 years.

17 "QUESTION: Okay. But you remembered what
18 you did in terms of elevating the" --

19 And then he answers: "That's my job. I do
20 that every -- every week, sir.

21 "QUESTION: And, in part, the reason you
22 remember it is because you do it the same way every
23 time; correct?

24 "ANSWER: Yes, sir.

25 "QUESTION: So you might not remember doing

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1 it exactly that way that day, but that's the way you
 2 normally do it; fair?"

3 And there was an objection.

4 I say: "You can answer. Is that a yes?"

5 He was instructed he can answer, and then
 6 his answer was, quote, "Yes, sir."

7 Scott, first of all --

8 MR. CONN: I have an objection I
 9 want to place on the record. Because there's
 10 objection to that testimony, I believe it's improper
 11 to ask this witness about it without the Court
 12 ruling on it.

13 That said, go ahead.

14 MR. CONCANNON: Sure.

15 BY MR. CONCANNON:

16 Q Scott, the fact of the matter is,
 17 as far as -- do you read Mr. Urjiles' deposition to
 18 be describing what he would normally do as opposed
 19 to what he actually did when he --

20 MR. CONN: Foundation.

21 BY MR. CONCANNON:

22 Q -- the Hendrickson system?

23 MR. CONN: Foundation and form of
 24 the question as well.

25 Go ahead.

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1 A I don't find it to be a consistent pattern
 2 of what he -- of what he did on a daily basis based
 3 on that testimony.

4 Q Okay.

5 A And that was taken into consideration.

6 Q By you?

7 A Yes.

8 Q All right. And when he gave the
 9 statement the day of the incident -- or within a day
 10 or two of the incident, he -- did he describe
 11 visually seeing the legs locked?

12 A No.

13 Q All right.

14 MR. CONN: Asked and answered.

15 MR. CONCANNON: Nothing further.

16 MR. CONN: We're all done.

17 THE WITNESS: Okay. Thanks,
 18 everybody. Merry Christmas.

19 THE COURT REPORTER: Mr. Concannon,
 20 this is Pat, the court reporter.

21 MR. CONCANNON: I want a mini.

22 THE COURT: You want, I'm sorry,
 23 e-trans and a mini?

24 MR. CONCANNON: Yes. Could I give
 25 you my E-mail?

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1 THE COURT REPORTER: Yes, that
 2 would be good. What is your e-mail?

3 MR. CONCANNON: A-C-O-N -- it's my
 4 first initial and last name basically.
 5 Aconcannon@smithbovill.com.

6 And am I on speaker still?

7 THE WITNESS: Yes.

8 MR. CONCANNON: Would you tell
 9 Mr. Turner to call me on his ride back, please.

10 THE WITNESS: Will do.

11 MR. CONN: I'd like a mini and an
 12 e-trans as well, please.

13 THE COURT REPORTER: What is your
 14 e-mail.

15 MR. CONN: It's econn@smsm.com.
 16 (Whereupon the deposition was
 17 adjourned at 1:35 p.m. for the day.)

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1 CERTIFICATE

2
 3 I, PATRICIA A. MOHYLA-KLEIN, a Notary
 4 Public and Certified Court Reporter of the State of
 5 New Jersey, do hereby certify that prior to the
 6 commencement of the examination SCOTT L. TURNER, was
 7 duly sworn by me to testify the truth, the whole
 8 truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is
 10 a true and accurate transcript of the testimony as
 11 taken by and before me at the time, place and on the
 12 date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a
 14 relative nor employee nor attorney nor counsel of
 15 any of the parties to this action and that I am
 16 neither a relative nor employee of such attorney or
 17 counsel, and that I am not financially interested in
 18 the action.

19
 20
 21
 22 Notary Public of the State of New Jersey
 23 License Number XI 00998

24 Dated: December 21, 2016
 25

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